

## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 4/8/2020 2:02:56 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** Canceled: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below  
**Start:** 4/8/2020 7:00:00 PM  
**End:** 4/8/2020 7:30:00 PM  
**Show Time As:** Free  
**Importance:** High  
**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert); Knapp, Kristien  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: 

Ex. 6 Personal Privacy (PP)

  
Conference ID:



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]  
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**Start:** 4/8/2020 7:00:00 PM  
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**Show Time As:** Free  
**Importance:** High  
**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert); Knapp, Kristien  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID: Ex. 6 Personal Privacy (PP)



Message

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**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 12/14/2020 5:46:06 PM  
**To:** Moody, Christina [Moody.Christina@epa.gov]  
**Subject:** Re: GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update

I am fine as well.

Sent from my iPhone

On Dec 14, 2020, at 12:08 PM, Moody, Christina <Moody.Christina@epa.gov> wrote:

Thanks Benita. Lee, did you have any edits or concerns?

Christina J. Moody | Acting Associate Director  
Resource Management Staff  
USEPA | OW  
Moody.Christina@epa.gov

On Dec 14, 2020, at 12:07 PM, Best-Wong, Benita <Best-Wong.Benita@epa.gov> wrote:

Hi Christina – I'm good with this update.

Regards,  
Benita

Benita Best-Wong  
Deputy Assistant Administrator  
Office of Water  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
202-566-1159

---

**From:** Moody, Christina <Moody.Christina@epa.gov>  
**Sent:** Monday, December 14, 2020 11:28 AM  
**To:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Gehron, Katherine <Gehron.Katherine@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Drummond, Laura <Drummond.Laura@epa.gov>  
**Subject:** GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update  
**Importance:** High



Good Morning Benita and Lee –

Pushing this review request to the top of your boxes for response. Please advise if you have questions or edits on this exercise and let us know if you concur.

Kind Regards,

Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) |  
Washington DC | 20460  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)

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**From:** Moody, Christina

**Sent:** Thursday, December 10, 2020 7:28 PM

**To:** Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Cc:** Vazquez, Sharon <[Vazquez.Sharon@epa.gov](mailto:Vazquez.Sharon@epa.gov)>; Gehron, Katherine <[Gehron.Katherine@epa.gov](mailto:Gehron.Katherine@epa.gov)>; Woods, Terry <[Woods.Terry@epa.gov](mailto:Woods.Terry@epa.gov)>; Drummond, Laura <[Drummond.Laura@epa.gov](mailto:Drummond.Laura@epa.gov)>

**Subject:** Review Requested: OW's FY 2020 Reporting Requirements Update

Hello Lee and Benita,

OCFO requested OW to provide updates for FY 2020 reporting requirements. Attached (and pasted below) are the draft FY 2020 reporting requirement updates for your review. Please let us know if you have edits, questions, or concerns.

### Status of FY 2020 Congressional Reporting Requirements

#	Report Heading	Office	Explanatory/Reporting Language	Due to Congress	Status	D Com
12	Protecting School Children from Lead	OW	The Committee considers protecting children from lead exposure to be a top priority. The Committee urges the Agency to expand efforts by the Agency to reduce childhood exposure to lead in drinking water at schools and childcare facilities. The Committee directs the Agency to study the merits of issuing separate requirements for public water systems to conduct lead monitoring in schools and child care facilities that they serve. The study should consider the frequency at which water systems conduct	No Date Specified	Ex. 5 Deliberative Process (DP)	



			<p>monitoring at schools and how water systems should share results with schools and communities. The Committee directs the Administrator to publish a report following completion of the study with findings and conclusions related towards the feasibility of the monitoring requirement. (House Report page 91)</p>			
24	Clean Water State Revolving Fund	OW	<p>The Committee notes that wastewater treatment facilities are some of the largest industrial users of electricity in the nation, and has provided Green Project Reserve (GPR) funds as part of the Clean Water State Revolving Fund to encourage states to improve energy and water efficiency at treatment facilities. In order to better track the ways in which states are utilizing GPR funds, the Committee directs the Agency to develop a uniform reporting framework which states may use to report their GPR spending, and urges the Agency to include tools and metrics that allow states to quantify estimated energy and water savings benefits of these investments. The Agency is directed to brief the Committee on its progress in developing this guidance within 180 days of enactment.</p>	Wednesday, June 17, 2020	<p>Ex. 5 Deliberative Process (DP)</p>	



					Ex. 5 Deliberative Process (DP)	
31	Interagency Coordination on Flood Reduction	OW	The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.	Sunday, January 19, 2020	Ex. 5 Deliberative Process (DP)	
33	GLRI Annual Report (FY18)	OW	Not in appropriation bill but this is an annual requirement for the GLRI program. OW submitted the FY17 annual report last year so this year we are expecting the FY18 annual report.	No Date Specified	Ex. 5 Deliberative Process (DP)	

Kind Regards,

Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff



U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) |  
Washington DC | 20460  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)



Message

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**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 12/3/2020 4:56:00 PM  
**To:** Risley, David [Risley.David@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** Re: Yazoo

Fair article for Politico.

Sent from my iPhone

On Dec 3, 2020, at 9:25 AM, Risley, David <Risley.David@epa.gov> wrote:

Politico

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, December 03, 2020 8:49 AM  
**To:** Risley, David <Risley.David@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** Re: Yazoo

What publication is this?

Sent from my iPhone

On Dec 3, 2020, at 8:36 AM, Risley, David <Risley.David@epa.gov> wrote:

## **EPA greenlights Mississippi flood control project, in surprise veto overturn**

THE EPA EFFECTIVELY OVERTURNED A 2008 VETO OF A CONTROVERSIAL FLOOD CONTROL PROJECT ALONG THE MISSISSIPPI RIVER, THE AGENCY CONFIRMED WEDNESDAY — A SURPRISE MOVE THAT CRITICS FEAR COULD UNDO PRECEDENT ON WHAT HAD BEEN CONSIDERED SETTLED PROJECT REJECTIONS.

Details: The EPA said that plans for the \$220 million Yazoo Backwater Area Pumps project had changed enough from the original proposal that the George W. Bush administration's decision to reject it under the Clean



Water Act no longer applied. “EPA has determined that the proposed project is not subject to EPA’s 2008 Final Determination,” EPA Regional Administrator Mary Walker wrote in a November 30 letter to the Army Corps of Engineers. “Importantly, the plan described in the 2020 [environmental review] includes a number of key features that distinguish it from the Plans prohibited by EPA’s 2008 Final Determination.”

Context: The Bush administration EPA nixed the plan for pumps that would divert rainwater from an already soggy part of the state into the river because of concerns that it would damage as much as 67,000 acres of wetlands and wildlife habitat. Critics have also said its price tag was too high for what would be delivered.

But proponents, including former Sen. Thad Cochran (R-Miss.) and his successor, Sen. Cindy Hyde-Smith, renewed their efforts to have it approved under the Trump administration. EPA administration Andrew Wheeler said in April 2019 the agency was reviewing the Bush-era veto and the Army Corps of Engineers in October released a draft environmental impact statement for a new configuration of the project that argued flooding was less important to the area’s hydrology than previously thought.

Opponents of the project said that the changes to the original design that the Corps is pursuing now — which include moving the project eight miles from the original proposed site and using natural gas instead of diesel to power the facility — are superficial at best and could actually threaten more environmental damage than the original plan would have.

EPA has only issued 13 Clean Water Act vetoes in its history, and they have been regarded as final actions killing the proposed projects.

“It’s a very, very dangerous precedent to set,” Olivia Dorothy, director of Upper Mississippi River Basin operations for American Rivers, said of the EPA’s decision. “These vetoes are supposed to be set.”

A Corps spokesperson referred questions to the EPA, which did not immediately reply to an email seeking comment.

What’s Next: American Rivers and other groups will likely challenge the EPA’s decision in court, Dorothy said.



**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 12/3/2020 1:48:38 PM  
**To:** Risley, David [Risley.David@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** Re: Yazoo

What publication is this?

Sent from my iPhone

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**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below

**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** Borum, Denis; Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph

Senate EPW Committee minority staff have requested a briefing on Yazoo.

**Call-in number:** Ex. 6 Personal Privacy (PP)  
**Conference ID:** Ex. 6 Personal Privacy (PP)



Message

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/30/2020 3:42:06 AM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Re: yazoo

Mary

I will defer to David on **Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP** It should read as you  
suggested **Ex. 5 AC/AWP/DP**  
Agree we should focus **Ex. 5 AC/AWP/DP**

Sent from my iPhone

On Nov 29, 2020, at 6:24 PM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee, David, and Kevin

I hope you all had a wonderful Thanksgiving. I am checking in. Is there anything you'd have me add/edit **Ex. 5 AC/AWP/DP**? I'm attaching the document as it currently stands. I have continued to make small edits for tone – and **Ex. 5 AC/AWP/DP** am down to the following considerations:

- **Ex. 5 AC/AWP/DP**
- **Ex. 5 AC/AWP/DP** My preference remains deleting it.
- Question – **Ex. 5 Attorney Client (AC)** **Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP** I think this should be something like **Ex. 5 Deliberative Process (DP)**  
Ex. 5 Deliberative Process (DP) but need to confirm this before I edit.
- I still really don't like **Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP** Will call Kevin in the morning.

Should we talk tomorrow or should I make decisions on the above and move to get this up to Mandy for review?

Thanks for all your help – and your folks help – on this letter,  
Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Saturday, November 28, 2020 5:24 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: yazoo



I am fine with taking it out.

Sent from my iPhone

On Nov 28, 2020, at 5:08 PM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

I have added a few/edited a bit. My main thought remains that Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP I would prefer that Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP Please let me know your thoughts.

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Saturday, November 28, 2020 12:04 PM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Subject:** Fwd: yazoo

Here are my comments.

Sent from my iPhone

Begin forwarded message:

**From:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Date:** November 28, 2020 at 11:32:00 AM EST  
**To:** "Fotouhi, David" <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: yazoo

Here are my comments. I don't expect to have any more.

---

**From:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven"  
<[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** "Nalven, Heidi" <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>, "Wehling, Carrie" <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>, "Palmer, Leif"



<Palmer.Leif@epa.gov>

**Subject: Re: yazoo**

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that: **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi,  
David <Fotouhi.David@epa.gov> wrote:

Thank you for this careful  
assessment. A few follow-up questions  
and reactions:

- I agree that **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**



## **Ex. 5 AC/AWP/DP**

- I understand the concern regarding **Ex. 5 AC/AWP/DP**

## **Ex. 5 AC/AWP/DP**



**Ex. 5 AC/AWP/DP**

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel



U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Neugeboren, Steven  
<[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David  
<[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Nalven, Heidi  
<[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Wehling, Carrie  
<[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Palmer, Leif  
<[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that: **Ex. 5 AC/AWP/DP**

## **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at Ex. 6 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection  
Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.



Washington DC 20460  
(202) 564-5488

<Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-  
dlf.msw.docx>

<Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-  
dlf.msw2.docx>



Message

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**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/28/2020 10:24:03 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Re: yazoo

I am fine with taking it out.

Sent from my iPhone

On Nov 28, 2020, at 5:08 PM, Walker, Mary <walker.mary@epa.gov> wrote:

I have added a few/edited a bit. My main thought remains that	Ex. 5 AC/AWP/DP
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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Saturday, November 28, 2020 12:04 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Fwd: yazoo

Here are my comments.

Sent from my iPhone

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** November 28, 2020 at 11:32:00 AM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Subject:** RE: yazoo

Here are my comments. I don't expect to have any more.

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST



To: "Fotouhi, David" <Fotouhi.David@epa.gov>  
Cc: "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
Subject: Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

- I understand the concern regarding

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP



## **Ex. 5 AC/AWP/DP**



## Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Neugeboren, Steven  
<[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that

Ex. 5 AC/AWP/DP

## Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at

Ex. 5 Personal Privacy (PP)

Ex. 5 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488



<Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-  
dlf.msw.docx>



Message

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 2/11/2020 11:57:36 AM  
**To:** Jackson, Ryan [jackson.ryan@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]  
**Subject:** Re: Yazoo Briefing paper - for review.

Ryan,

The preliminary EPA review of whether

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Because this is a Corps project they don't technically issue themselves a 404 permit. The equivalent of the 404 permit is called a 404(b)(1) analysis and would be part of their ROD on the new project. The Corps has said that if we were to determine that

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Lee

Sent from my iPhone

On Feb 11, 2020, at 5:42 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

When will EPA conclude our review?

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

?

Ryan Jackson  
Chief of Staff  
U.S. EPA

Ex. 6 Personal Privacy (PP)

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** February 10, 2020 at 7:46:09 PM EST  
**To:** "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Fotouhi, David" <Fotouhi.David@epa.gov>, "Walker, Mary" <walker.mary@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.



Ryan,

Here a briefing paper on where we stand on the Yazoo pump project for your review.

Let me know if you need anything else.

Respectfully,

Lee

<R4 MS Yazoo Pumps January 2020 Update-ow LDF (002).docx>



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/28/2020 5:03:56 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**Subject:** Fwd: yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mlf markup-dlf.docx; ATT00001.htm

Here are my comments.

Sent from my iPhone

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** November 28, 2020 at 11:32:00 AM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Subject:** RE: yazoo

Here are my comments. I don't expect to have any more.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Cc:** "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Subject:** Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

Ex. 5 AC/AWP/DP

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A



1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi, David  
<[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that **Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP**
- I understand the concern regarding **Ex. 5 AC/AWP/DP**  
**Ex. 5 AC/AWP/DP**



# Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that

Ex. 5 AC/AWP/DP

**Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

So we're

sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

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Ex. 6 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A



1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 4:08:20 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below

**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/27/2020 5:40:43 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Re: Revised letter for Yazoo

Mary,

Have we seen the updates draft?

Lee

Sent from my iPhone

On Nov 25, 2020, at 11:35 AM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee and David,

Attached is some draft language Leif has suggested to address **Ex. 5 AC/DP** Sending for your input.

Thank you for your help on this,  
Mary

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Wednesday, November 25, 2020 11:07 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>  
**Subject:** FW: Revised letter for Yazoo

Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the **Ex. 5 AC/DP** that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

---

**From:** Creswell, Michael <Creswell.Michael@epa.gov>  
**Sent:** Wednesday, November 25, 2020 10:52 AM  
**To:** Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Revised letter for Yazoo

Heidi,



Attached is the revised draft letter with the regional administrator's proposed changes.

Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

CONFIDENTIALITY NOTICE: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual(s) or entity(ies) to whom or to which it is addressed. This communication may contain information that is proprietary, privileged, or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message.

<Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx>



## Appointment

---

**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:03 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

**Location:** See Call-in number, below

**Start:** 4/1/2020 8:00:00 PM

**End:** 4/1/2020 8:30:00 PM

**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt)

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



## Appointment

---

**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 1/31/2020 8:39:13 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** General Discussion - Yazoo

**Location:** Teleconference Ex. 6 Personal Privacy (PP) ; Code Ex. 6 Personal Privacy (PP)

**Start:** 2/3/2020 8:30:00 PM

**End:** 2/3/2020 9:00:00 PM

**Show Time As:** Busy

**Required Attendees:** Forsgren, Lee; Fotouhi, David; Walker, Mary



## Appointment

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**From:** Johnson, Belinda [Johnson.Belinda@epa.gov]  
**Sent:** 1/31/2020 8:39:11 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** General Discussion - Yazoo  
**Location:** Teleconference Ex. 6 Personal Privacy (PP) **Code** Ex. 6 Personal Privacy (PP)

**Start:** 2/3/2020 8:30:00 PM  
**End:** 2/3/2020 9:00:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Fotouhi, David; Walker, Mary



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/19/2020 11:53:54 PM  
**To:** Goodin, John [Goodin.John@epa.gov]  
**CC:** Aguirre, Janita [Aguirre.Janita@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Weiler, Katherine [Weiler.Katherine@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Re: Urgent Review: Revisions to version of Yazoo DSEIS letter sent to leadership on 11-17

Thanks John.

Sent from my iPhone

On Nov 19, 2020, at 6:00 PM, Goodin, John <Goodin.John@epa.gov> wrote:

DELIBERATIVE

Evening, Lee—although Region 4 will be distributing the revised senior leadership review draft of the NEPA comment letter for your final review Friday or Monday, I wanted to send you a copy of our staff comments on the penultimate draft for your awareness. We have a few in the wetlands section and one in Ex. 5 Deliberative Process (DP) I understand that Mary is looking to sign next Wednesday (though technically I believe the due date is the following Monday).

Feel free to loop back with any questions now or when you have the final review draft from R4.

Thanks,  
John

---

**From:** Goodin, John  
**Sent:** Thursday, November 19, 2020 5:46 PM  
**To:** Fite, Mark <Fite.Mark@epa.gov>  
**Cc:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Russell Kaiser <Kaiser.Russell@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Steven Neugeboren <Neugeboren.Steven@epa.gov>  
**Subject:** FW: Urgent Review: Revisions to version of Yazoo DSEIS letter sent to leadership on 11-17

DELIBERATIVE

Evening, Mark—just a few OWOW comments here—couple points added back in the wetlands section, though mostly used a footnote format assuming that helps for readability. We also caught a few typos and font issues in the rest of the document.

Thanks again to you and your team,  
John

<Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles\_OWOW edits.docx>



Message

---

**From:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Sent:** 1/31/2020 6:20:10 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Automatic reply: Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

I'm out of the office on Friday, January 31. If you need assistance please contact Dawn Messier at 564-5517.



## Appointment

---

**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 1/31/2020 8:39:13 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** General Discussion - Yazoo

**Location:** Teleconference Ex. 6 Personal Privacy (PP) Code Ex. 6 Personal Privacy (PP)

**Start:** 2/3/2020 8:30:00 PM

**End:** 2/3/2020 9:00:00 PM

**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Fotouhi, David; Walker, Mary



## Appointment

---

**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below

**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



## Appointment

---

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**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]

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**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below

**Start:** 4/1/2020 8:00:00 PM  
**End:** 4/1/2020 8:30:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Borum, Denis; Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

**Location:** See Call-in number, below

**Start:** 4/1/2020 8:00:00 PM

**End:** 4/1/2020 8:30:00 PM

**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt)

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/18/2020 1:51:09 PM  
**To:** Mejias, Melissa [mejias.melissa@epa.gov]  
**CC:** Frye, Tony (Robert) [frye.robert@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**Subject:** Re: Yazoo

Thanks

Sent from my iPhone

On Mar 18, 2020, at 9:49 AM, Mejias, Melissa <mejias.melissa@epa.gov> wrote:

Lee - I have added it to your calendar.

Call in: [Ex. 6 Personal Privacy (PP)]  
PIN: [Ex. 6 Personal Privacy (PP)]

Mel

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:35 AM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** Re: Yazoo

Mary

Can we get the call in number.

Lee

Sent from my iPhone

On Mar 18, 2020, at 9:34 AM, Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)> wrote:

Thank you! I'll join the call. Let me know if I can be helpful with anything leading up to the call

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: [Ex. 6 Personal Privacy (PP)]



---

**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Tuesday, March 17, 2020 3:39 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>  
**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.

Thanks,  
Mary

---

**From:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?

Thanks,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** RE: Yazoo



If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
Cc: Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 11/14/2020 12:40:57 PM  
**To:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Re: Draft Yazoo Pumps 2020 DSEIS comment letter

No problem on not getting back to me yesterday. No I did not see the letter that went to Mary.

Sent from my iPhone

On Nov 14, 2020, at 7:13 AM, Kaiser, Russell <Kaiser.Russell@epa.gov> wrote:

Lee: Sorry I missed your email yesterday regarding status ... I had a few doc appointments yesterday and was out of commission. Trying to track down the letter that went to Mary or did she share with you already?

Thanks and have a great weekend!

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)

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**From:** Kaiser, Russell  
**Sent:** Saturday, November 14, 2020 7:11 AM  
**To:** Ainslie, William <Ainslie.William@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Cc:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Subject:** RE: Draft Yazoo Pumps 2020 DSEIS comment letter

Ntale,

Can you please share the letter that went to Mary so that we can provide to Lee as well.

Thanks,

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds



1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)

---

**From:** Ainslie, William <Ainslie.William@epa.gov>  
**Sent:** Friday, November 13, 2020 7:11 PM  
**To:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Cc:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Subject:** Draft Yazoo Pumps 2020 DSEIS comment letter

Just wanted to update everyone that the Writing/drafting team has completed a draft of comments on the 2020 DSEIS. This draft has largely incorporated comments from NEPA and Water reviewers. Ntale has the current version. Given NEPA's schedule to provide a copy of the letter to management and in an effort to provide version control, please contact Ntale. A pre-draft of the letter is being sent out to Mary tonight.

Additional discussion will no doubt occur next week. Have a good weekend.

Bill

William Ainslie  
Wetlands Regulatory Section  
EPA Region IV  
61 Forsyth St., NE  
Atlanta, GA 30303  
(404) 562-9400

*"Examine each question in terms of what is ethically and esthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." **Aldo Leopold***



Message

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**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/18/2020 1:35:16 PM  
**To:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**BCC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Re: Yazoo

Mary

Can we get the call in number.

Lee

Sent from my iPhone

On Mar 18, 2020, at 9:34 AM, Frye, Tony (Robert) <frye.robert@epa.gov> wrote:

Thank you! I'll join the call. Let me know if I can be helpful with anything leading up to the call

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Tuesday, March 17, 2020 3:39 PM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.

Thanks,  
Mary

---

**From:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?



Thanks,  
Tony

**Tony Frye**

Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
Cc: Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.



Sent from my iPad



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/16/2020 11:44:12 PM  
**To:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <Forsgren.Lee@epa.gov>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <ross.davidp@epa.gov>  
Cc: Walker, Mary <walker.mary@epa.gov>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/16/2020 10:26:25 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]  
**Subject:** Re: Yazoo

Mary

Per Dave's suggestion why don't we have the Administrator call her?  
Lee

Sent from my iPhone

> On Mar 16, 2020, at 6:08 PM, Walker, Mary <walker.mary@epa.gov> wrote:  
>  
> If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.  
>  
> -----Original Message-----  
> From: Forsgren, Lee <Forsgren.Lee@epa.gov>  
> Sent: Monday, March 16, 2020 6:00 PM  
> To: Ross, David P <ross.davidp@epa.gov>  
> Cc: Walker, Mary <walker.mary@epa.gov>  
> Subject: Re: Yazoo  
>  
> Will cover it if OCIR can't get it postponed.  
>  
> Sent from my iPhone  
>  
>> On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:  
>>  
>> Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.  
>>  
>> Thanks.  
>>  
>>  
>>  
>> Sent from my iPad



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/16/2020 10:01:05 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]  
**Subject:** Re: Yazoo

Thanks. I will cover if we can't get it postponed.

Sent from my iPhone

> On Mar 16, 2020, at 5:57 PM, Walker, Mary <walker.mary@epa.gov> wrote:  
>  
> Meeting is 1-2 on Thursday 3/19 in Senator Hyde Smith's office. Agenda to follow  
>  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Monday, March 16, 2020 5:42 PM  
> To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
> Cc: Walker, Mary <walker.mary@epa.gov>  
> Subject: Yazoo  
>  
> Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.  
>  
> Thanks.  
>  
>  
>  
> Sent from my iPad



Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 3/16/2020 10:00:00 PM  
**To:** Ross, David P [ross.davidp@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]  
**Subject:** Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

> On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:  
>  
> Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.  
>  
> Thanks.  
>  
>  
>  
> Sent from my iPad



## Appointment

---

**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below  
**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert); Knapp, Kristien  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]

**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

**Location:** See Call-in number, below

**Start:** 4/8/2020 3:30:00 PM

**End:** 4/8/2020 4:00:00 PM

**Show Time As:** Busy

**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number:

Conference ID:

Ex. 6 Personal Privacy (PP)



## Appointment

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 3:48:04 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Marraccini, Davina [Marraccini.Davina@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Wise, Allison [Wise.Allison@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Edwards, John (Holt) [edwards.john@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]

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**Location:** See Call-in number, below

**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
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**Required Attendees:** Borum, Denis; Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert)  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)  
Conference ID:



Message

**From:** Moody, Christina [Moody.Christina@epa.gov]  
**Sent:** 12/11/2020 12:28:03 AM  
**To:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Gehron, Katherine [Gehron.Katherine@epa.gov]; Woods, Terry [Woods.Terry@epa.gov]; Drummond, Laura [Drummond.Laura@epa.gov]  
**Subject:** Review Requested: OW's FY 2020 Reporting Requirements Update  
**Attachments:** OW\_ FY2020 Reporting Requirement Update v04 Clean.xlsx; OW\_ FY2020 Reporting Requirement Update v04 TC.xlsx

Hello Lee and Benita,

OCFO requested OW to provide updates for FY 2020 reporting requirements. Attached (and pasted below) are the draft FY 2020 reporting requirement updates for your review. Please let us know if you have edits, questions, or concerns.

### Status of FY 2020 Congressional Reporting Requirements

#	Report Heading	Office	Explanatory/Reporting Language	Due to Congress	Status	Date Completed
12	Protecting School Children from Lead	OW	The Committee considers protecting children from lead exposure to be a top priority. The Committee urges the Agency to expand efforts by the Agency to reduce childhood exposure to lead in drinking water at schools and childcare facilities. The Committee directs the Agency to study the merits of issuing separate requirements for public water systems to conduct lead monitoring in schools and child care facilities that they serve. The study should consider the frequency at which water systems conduct monitoring at schools and how water systems should share results with schools and communities. The Committee directs the Administrator to publish a report following completion of the study with findings and conclusions related towards the feasibility of the monitoring requirement. (House Report page 91)	No Date Specified	Ex. 5 Deliberative Process (DP)	



24	Clean Water State Revolving Fund	OW	<p>The Committee notes that wastewater treatment facilities are some of the largest industrial users of electricity in the nation, and has provided Green Project Reserve (GPR) funds as part of the Clean Water State Revolving Fund to encourage states to improve energy and water efficiency at treatment facilities. In order to better track the ways in which states are utilizing GPR funds, the Committee directs the Agency to develop a uniform reporting framework which states may use to report their GPR spending, and urges the Agency to include tools and metrics that allow states to quantify estimated energy and water savings benefits of these investments. The Agency is directed to brief the Committee on its progress in developing this guidance within 180 days of enactment.</p>	Wednesday, June 17, 2020	<div>Ex. 5 Deliberative Process (DP)</div>	
31	Interagency Coordination on Flood Reduction	OW	<p>The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019,</p>	Sunday, January 19, 2020	<div>Ex. 5 Deliberative Process (DP)</div>	



			<p>due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.</p>		<div>Ex. 5 Deliberative Process (DP)</div>	
33	GLRI Annual Report (FY18)	OW	<p>Not in appropriation bill but this is an annual requirement for the GLRI program. OW submitted the FY17 annual report last year so this year we are expecting the FY18 annual report.</p>	No Date Specified	<div>Ex. 5 Deliberative Process (DP)</div>	

Kind Regards,

**Christina J. Moody | Acting Associate Director**  
**Office of Water – Resource Management Staff**  
**U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460**  
**Moody.Christina@epa.gov**



Message

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 11/28/2020 4:09:49 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Cc:** "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Subject:** Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that

Ex. 5 AC/AWP/DP

**Ex. 5 AC/AWP/DP**



- I understand the concern regarding

Ex. 5 AC/AWP/DP

## Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Nalven, Heidi <Nalven.Heidi@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP



**Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at Ex. 6 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488



Message

---

**From:** Fite, Mark [Fite.Mark@epa.gov]  
**Sent:** 11/27/2020 9:35:30 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**CC:** Blevins, John [Blevins.John@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**Subject:** Deliberative: Revised draft letter  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_clean.docx; Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup.docx

**Importance:** High

DRAFT, DELIBERATIVE

Hello all,

Please find the revised draft Yazoo letter for your consideration. Thank you to Brian and Russ for their substantial effort to rework the letter to incorporate comments from the principles. I've included a clean version and another with comments & track changes to show/explain how comments were addressed.

Have a great weekend!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/27/2020 8:46:00 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Re: Revised letter for Yazoo

I've asked them to send what they have shortly. It's my understanding we may need to discuss further. I'll send it as soon as I get it.

Sent from my iPhone

On Nov 27, 2020, at 11:58 AM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

I understand there may be some additional issues regarding **Ex. 5 AC/DP** that I've heard staff intend to raise to my attention this afternoon. I'll let you know more once I hear from them and understand the issues.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, November 27, 2020 12:41 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** Re: Revised letter for Yazoo

Mary,

Have we seen the updates draft?

Lee

Sent from my iPhone

On Nov 25, 2020, at 11:35 AM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

Hi Lee and David,

Attached is some draft language Leif has suggested to address **Ex. 5 AC/DP**.  
Sending for your input.



Thank you for your help on this,  
Mary

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Wednesday, November 25, 2020 11:07 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>  
**Subject:** FW: Revised letter for Yazoo

Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the **Ex. 5 AC/DP** that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

---

**From:** Creswell, Michael <Creswell.Michael@epa.gov>  
**Sent:** Wednesday, November 25, 2020 10:52 AM  
**To:** Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Revised letter for Yazoo

Heidi,

Attached is the revised draft letter with the regional administrator's proposed changes.

Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

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<Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx>



## Appointment

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 11/6/2020 1:33:28 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]

**Subject:** Accepted: Yazoo policy call

**Location:** Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 11/6/2020 11:00:00 PM  
**End:** 11/6/2020 11:30:00 PM

**Recurrence:** (none)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/27/2020 7:46:16 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Fwd: Revised letter for Yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx; ATT00001.htm

This is still the latest I have received. Nothing from NEPA yet. I don't expect that til end of the day.

Sent from my iPhone

Begin forwarded message:

**From:** "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Date:** November 25, 2020 at 10:06:47 AM CST  
**To:** "Walker, Mary" <walker.mary@epa.gov>  
**Cc:** "Creswell, Michael" <Creswell.Michael@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Hicks, Matt" <Hicks.Matthew@epa.gov>, "Ashbee, Blake" <ashbee.blake@epa.gov>, "Blevins, John" <Blevins.John@epa.gov>  
**Subject:** FW: Revised letter for Yazoo

Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the Ex. 5 AC/DP that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

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**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Revised letter for Yazoo

Heidi,

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Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

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print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message.



Message

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 11/27/2020 5:58:48 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**CC:** Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: Revised letter for Yazoo

I understand there may be some additional issues regarding **Ex. 5 AC/DP** that I've heard staff intend to raise to my attention this afternoon. I'll let you know more once I hear from them and understand the issues.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**Sent:** Friday, November 27, 2020 12:41 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** Re: Revised letter for Yazoo

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Lee

Sent from my iPhone

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Thank you for your help on this,  
Mary

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**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>; Ghosh, Mita <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Blevins, John <[Blevins.John@epa.gov](mailto:Blevins.John@epa.gov)>  
**Subject:** FW: Revised letter for Yazoo



Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the Ex. 5 AC/DP that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

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**Sent:** Wednesday, November 25, 2020 10:52 AM  
**To:** Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>  
**Cc:** Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** Revised letter for Yazoo

Heidi,

Attached is the revised draft letter with the regional administrator's proposed changes.

Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

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<Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx>



Message

---

**From:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Sent:** 11/18/2020 1:54:25 AM  
**To:** Fite, Mark [Fite.Mark@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]  
**Subject:** Re: DELIBERATIVE: Yazoo pre-draft comment letter

All - OFA reviewed this letter and finds it consistent with our policy and procedures and associated policy guidance memos. R4 team has coordinated language with OFA (Rob and I).

Thanks. Cindy

Cindy S Barger  
Director NEPA Compliance Division  
Tel:202-564-3169  
Cel: Ex. 6 Personal Privacy (PP)

On Nov 17, 2020, at 8:44 PM, Fite, Mark <Fite.Mark@epa.gov> wrote:

DELIBERATIVE – DRAFT – DO NOT RELEASE

Please find the pre-draft Yazoo comment letter for your consideration. We expect to discuss the key elements in tomorrow's briefing, and would like any suggested edits by COB Wednesday, 11/18, if possible.

Thank you!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740

<Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles.docx>



Message

---

**From:** Fite, Mark [Fite.Mark@epa.gov]  
**Sent:** 11/5/2020 9:04:25 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]  
**CC:** Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Schaedle, Candi [Schaedle.Candi@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]  
**Subject:** DELIBERATIVE - YAZOO NEPA Analysis & Meeting Agenda  
**Attachments:** DRAFT Yazoo NEPA Considerations Table 11-5-20.docx

**Importance:** High

Draft, Deliberative – Do Not Release

Please find attached the NEPA Analysis for our discussion tomorrow morning.

The Agenda for the meeting is as follows:

- Discussion of CWA Comparison table – 20 minutes
- Discussion of NEPA Analysis table – 20 minutes
- Next Steps – 5 minutes

Thanks!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740



Message

---

**From:** Fite, Mark [Fite.Mark@epa.gov]  
**Sent:** 11/18/2020 1:44:05 AM  
**To:** Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Ashbee, Blake [ashbee.blake@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]  
**Subject:** DELIBERATIVE: Yazoo pre-draft comment letter  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles.docx  
  
**Importance:** High

DELIBERATIVE – DRAFT – DO NOT RELEASE

Please find the pre-draft Yazoo comment letter for your consideration. We expect to discuss the key elements in tomorrow's briefing, and would like any suggested edits by COB Wednesday, 11/18, if possible.

Thank you!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740



Message

**From:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Sent:** 11/17/2020 10:31:11 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Call me

I'm done with my class. Are you still free?

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
Cell: Ex. 6 Personal Privacy (PP)

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Tuesday, November 17, 2020 4:16 PM  
**To:** Barger, Cindy <Barger.Cindy@epa.gov>  
**Subject:** Call me

Cindy,

When you get a minute can you call me on Yazoo process? My cell number is Ex. 6 Personal Privacy (PP)

Lee



Message

---

**From:** Goodin, John [Goodin.John@epa.gov]  
**Sent:** 10/5/2020 2:48:08 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]  
**Subject:** RE: 404 question

Thanks—will let her know.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, October 05, 2020 10:46 AM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Subject:** RE: 404 question

John,

I am happy to speak with Andrea and other OMB staff about EPA's role in the Yazoo pumps project process but, given recent discussions at the policy level, I would strongly encourage them to include the PAD in those discussions.

Regards,  
Lee

**D. Lee Forsgren**  
Deputy Assistant Administrator  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania, Avenue NW  
Room 3219B WJC East Building  
Washington, DC 20460  
202-564-5700

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Monday, October 5, 2020 10:40 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Subject:** FW: 404 question

Morning, Lee—thinking you may be the more appropriate person to connect with Andrea on this one. Let me know if I should point her to Mel to line something up or you'll just connect directly.

Thanks,  
John

---

**From:** Grossman, Andrea L. EOP/OMB <Ex. 6 Personal Privacy EOP (PP)>  
**Sent:** Monday, October 05, 2020 9:29 AM  
**To:** Goodin, John <Goodin.John@epa.gov>



**Cc:** Hickey, Mike J. EOP/OMB < Ex. 6 Personal Privacy EOP (PP) >

**Subject:** 404 question

John,

Do you have any availability for a quick call today? My OMB colleagues who cover Army Corps are working on briefing updates related to Yazoo Pumps and I want to make sure we understand the latest from EPA on it as well.

Thanks,

Andrea Grossman  
Program Examiner  
OMB Environment Branch



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 9/23/2020 8:38:26 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Risley, David [Risley.David@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** DEADLINE COB 10/2 - review updated and new hearing prep fact sheets (for Lee)  
**Attachments:** Assignments - OW Hearing Fact Sheets.docx; new-FL 404-daa.docx; new-urban-waters-daa.docx; new-water-system-resiliency-daa.docx; OW-11 - 404(g) assumption-daa.docx; OW-12 ANV-daa-minor.docx; OW-20 Integrated Planning-daa.docx; OW-26 Trash Free Waters-daa.docx; OW-44 - COVID-daa.docx; R4-1-yazoo-daa.docx; R4-3-horn-lake-daa.docx

Lee,

Attached are the set of updated and new hearing prep fact sheets that were assigned to you for review (10 total). There are several assigned to you that are on hold as we await for additional actions to take place (WIFIA loan closings, VIDA). The complete list of Fact Sheets and assignments is also attached for your awareness (Assignments - OW Hearing Fact Sheets.docx). Please let me know if a sheet is incorrectly assigned. The updated fact sheets are in redline showing the updates compared to the versions from Administrator Wheeler's May hearing binder. The new Fact Sheets are clean versions. I left in some comment bubbles I thought might be useful for you to see (e.g., Trash Free Waters). If the file name has "minor" in it, the changes are minor. The SOP allots 4 days for your review but since there is not a current external driver (e.g., a hearing), the plan is to give IO Senior Leadership a little over a week. Please respond to me with comments or edits **by COB Friday, October 2.**

Thanks for reviewing!

For your reference, here is the relevant section of the SOP:

**OW Senior Leadership review (4 business days)**

The **Senior Advisor for Congressional Affairs** will provide fact sheets to OW-IO Senior Leadership (DAAs and Senior Advisors) as soon as possible for review.

- The **Senior Advisor for Congressional Affairs** will include the OW-IO RMS Director, OW-IO Communications Director, and OW-IO Special Assistants in communications with OW-IO Senior Leadership.
- As feedback from OW-IO Senior Leadership is received, the **Senior Advisor for Congressional Affairs** will make appropriate edits, coordinating with the Program Office and Regions to add more information as appropriate.
- Substantive edits will be confirmed with the Office Director.

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

---

**From:** Goodin, John [Goodin.John@epa.gov]  
**Sent:** 10/5/2020 2:39:40 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]  
**Subject:** FW: 404 question

Morning, Lee—thinking you may be the more appropriate person to connect with Andrea on this one. Let me know if I should point her to Mel to line something up or you'll just connect directly.

Thanks,  
John

---

**From:** Grossman, Andrea L. EOP/OMB <Ex. 6 Personal Privacy EOP (PP)>  
**Sent:** Monday, October 05, 2020 9:29 AM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Hickey, Mike J. EOP/OMB <Ex. 6 Personal Privacy EOP (PP)>  
**Subject:** 404 question

John,

Do you have any availability for a quick call today? My OMB colleagues who cover Army Corps are working on briefing updates related to Yazoo Pumps and I want to make sure we understand the latest from EPA on it as well.

Thanks,

Andrea Grossman  
Program Examiner  
OMB Environment Branch



Message

---

**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 8/7/2020 4:42:12 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Goodin, John [Goodin.John@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Requested AK Mitigation Material  
**Attachments:** DRAFT OW Pebble Mitigation Information 08072020.docx; DRAFT Internal Qs and As\_AK Mitigation MOA\_08-7-2018.docx; DRAFT Timing of CWA Section 404c Actions 08072020.docx

**Importance:** High  
**Sensitivity:** Company Confidential

DRAFT, DELIBERATIVE

Hi Lee,

Per your request during our joint phone call on Tuesday, Aug 4, 2020 , we are providing you a first cut at the information you asked us to develop. Attached are the 2018 MOA Q&As, Pebble Talking Points, and a summary on CWA section 404(c) actions.

Please let us know if this is the information that you are looking for or if there are additional needs. Also, due to the nature of this request, the attached information has not been reviewed by our program staff, OGC, Region 10, or others.

Let us know if you need any additional support or have questions.

Thanks.

bf



Message

---

**From:** Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]  
**Sent:** 11/4/2020 10:43:02 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**CC:** Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]  
**Subject:** Deliberative - Side by Side  
**Attachments:** DRAFT Comparion of 2007 FSEIS and 2020 DSEIS Proposals - 11-4-2020 - clean.docx

Deliberative – Do Not Release

All,

Please find the draft Comparison of Yazoo Pumps Project Proposals from 2007 and 2020. We will be discussing this at the Yazoo Meeting Friday morning.

Thanks  
Jeaneanne



Message

---

**From:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Sent:** 11/14/2020 12:13:02 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** FW: Draft Yazoo Pumps 2020 DSEIS comment letter

Lee: Sorry I missed your email yesterday regarding status ... I had a few doc appointments yesterday and was out of commission. Trying to track down the letter that went to Mary or did she share with you already?

Thanks and have a great weekend!

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)

---

**From:** Kaiser, Russell  
**Sent:** Saturday, November 14, 2020 7:11 AM  
**To:** Ainslie, William <Ainslie.William@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Cc:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Subject:** RE: Draft Yazoo Pumps 2020 DSEIS comment letter

Ntale,

Can you please share the letter that went to Mary so that we can provide to Lee as well.

Thanks,

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)



---

**From:** Ainslie, William <[Ainslie.William@epa.gov](mailto:Ainslie.William@epa.gov)>

**Sent:** Friday, November 13, 2020 7:11 PM

**To:** Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; McGill, Thomas <[Mcgill.Thomas@epa.gov](mailto:Mcgill.Thomas@epa.gov)>; Kaiser, Russell <[Kaiser.Russell@epa.gov](mailto:Kaiser.Russell@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>

**Cc:** Kajumba, Ntale <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>

**Subject:** Draft Yazoo Pumps 2020 DSEIS comment letter

Just wanted to update everyone that the Writing/drafting team has completed a draft of comments on the 2020 DSEIS. This draft has largely incorporated comments from NEPA and Water reviewers. Ntale has the current version. Given NEPA's schedule to provide a copy of the letter to management and in an effort to provide version control, please contact Ntale. A pre-draft of the letter is being sent out to Mary tonite.

Additional discussion will no doubt occur next week. Have a good weekend.

Bill

William Ainslie  
Wetlands Regulatory Section  
EPA Region IV  
61 Forsyth St., NE  
Atlanta, GA 30303  
(404) 562-9400

*"Examine each question in terms of what is ethically and esthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." **Aldo Leopold***



Message

---

**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 12/1/2020 9:19:45 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

OK, I'll double check that R4 is coordinating with them.

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Tuesday, December 01, 2020 4:15 PM  
**To:** Risley, David <Risley.David@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I am fine with this so long as we are coordinated with the COE on our message.

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:56 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee,  
This updated version from R4 includes your comments and additional edits that resulted from Mary's feedback and OGC. Do you have further comments on this version?

Best,  
David

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 01, 2020 3:49 PM  
**To:** Risley, David <Risley.David@epa.gov>  
**Cc:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

This language was supplied by Region 4. Please let Brandi and Leif know directly if there are issues with this approach, thanks!

Ariadne Goerke



Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 office  
Ex. 6 Personal Privacy (PP) cell

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>

**Sent:** Tuesday, December 1, 2020 3:44 PM

**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>

**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>

**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Hi Ariadne -- per your request below I've revised the desk statement as David suggested and added a statement about: Ex. 5 AC/DP Language that I've added (or reorganized) is in red.

**Ex. 5 AC/DP**

If we get a FOIA request for comments please refer the requestor to FOIA on-line; I'll ensure that our FOIA office is aware of the letter and if we get a request I'll ask them to let me know so that there will not be any surprises.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542  
Ex. 6 Personal Privacy (PP) cell

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>

**Sent:** Tuesday, December 1, 2020 3:20 PM

ED\_005402\_00003628-00002



**To:** Fotouhi, David <Fotouhi.David@epa.gov>

**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>

**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Can someone familiar with the matter edit the language from OW and Region 4 to address David's concerns?

**Ariadne Goerke**

Acting Associate Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

202-564-5471 *office*

Ex. 6 Personal Privacy (PP) *cell*

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>

**Sent:** Tuesday, December 1, 2020 3:15 PM

**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>

**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>

**Subject:** Re: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I'd prefer a more streamlined approach. I don't see the benefit of

Ex. 5 AC/DP

Ex. 5 AC/DP I agree

Ex. 5 AC/DP

Sent from my iPhone

On Dec 1, 2020, at 3:13 PM, Goerke, Ariadne <Goerke.Ariadne@epa.gov> wrote:

Here are some comments from OW. Any comments from OGC should be directed to Brandi Jenkins in Region 4.

**Proposed Response:**

**Ex. 5 AC/DP**

**Ariadne Goerke**

Acting Associate Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

202-564-5471 *office*



**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:49 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

David should weigh in, but query whether Ex. 5 AC/DP  
Ex. 5 AC/DP so is a  
judgment call. Another option Ex. 5 AC/DP  
Ex. 5 AC/DP Adding my staff and Leif Palmer from ORC for awareness.

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:43 PM  
**To:** OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Please let me know if WLO has issues or comments on the response below regarding this inquiry about the Yazoo pump final EIS (or if there is another law office that had an interest). Thanks.

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 office

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:37 PM  
**To:** regionalpress <regionalpress@epa.gov>  
**Cc:** Risley, David <Risley.David@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Table, Melba <Table.Melba@epa.gov>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**



I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

## Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Sent:** Tuesday, December 1, 2020 11:34 AM

**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>

**Sent:** Tuesday, December 1, 2020 11:27 AM

**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**

Water Reporter

[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (C)

202-446-0468 (p)

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**Environment & Energy Publishing, LLC**

122 C Street, NW, Suite 722, Washington, DC 20001

EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

---

**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 12/1/2020 8:55:56 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee,  
This updated version from R4 includes your comments and additional edits that resulted from Mary's feedback and OGC. Do you have further comments on this version?

Best,  
David

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 01, 2020 3:49 PM  
**To:** Risley, David <Risley.David@epa.gov>  
**Cc:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

This language was supplied by Region 4. Please let Brandi and Leif know directly if there are issues with this approach, thanks!

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 *office*  
Ex. 6 Personal Privacy (PP) *cell*

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:44 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Hi Ariadne -- per your request below I've revised the desk statement as David suggested and added a statement about Ex. 5 AC/DP Language that I've added (or reorganized) is in red.



# Ex. 5 AC/DP

If we get a FOIA request for comments please refer the requestor to FOIA on-line; I'll ensure that our FOIA office is aware of the letter and if we get a request I'll ask them to let me know so that there will not be any surprises.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542  
Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

---

**From:** Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 3:20 PM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; OGC WLO MGMT <[OGC\\_WLO\\_MGMT@epa.gov](mailto:OGC_WLO_MGMT@epa.gov)>; Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>; Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Can someone familiar with the matter edit the language from OW and Region 4 to address David's concerns?

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 office  
Ex. 6 Personal Privacy (PP) cell

---

**From:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 3:15 PM  
**To:** Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>  
**Cc:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; OGC WLO MGMT <[OGC\\_WLO\\_MGMT@epa.gov](mailto:OGC_WLO_MGMT@epa.gov)>; Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>; Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Palmer, Leif



<Palmer.Leif@epa.gov>

**Subject:** Re: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I'd prefer a more streamlined approach. I don't see the benefit of

Ex. 5 AC/DP

Ex. 5 AC/DP I agree

Ex. 5 AC/DP

Sent from my iPhone

On Dec 1, 2020, at 3:13 PM, Goerke, Ariadne <Goerke.Ariadne@epa.gov> wrote:

Here are some comments from OW. Any comments from OGC should be directed to Brandi Jenkins in Region 4.

**Proposed Response:**

**Ex. 5 AC/DP**

**Ariadne Goerke**

Acting Associate Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

202-564-5471 office

Ex. 6 Personal Privacy (PP) cell

---

**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>

**Sent:** Tuesday, December 1, 2020 2:49 PM

**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC WLO MGMT

<OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>

**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

David should weigh in, but query whether

Ex. 5 AC/DP

Ex. 5 AC/DP

so is a

judgment call. Another option

Ex. 5 AC/DP

Ex. 5 AC/DP

Adding my staff and Leif Palmer from ORC for awareness.

Steven Neugeboren

Associate General Counsel for Water

United States Environmental Protection Agency

Mailcode 2355A



1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

---

**From:** Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 2:43 PM  
**To:** OGC WLO MGMT <[OGC\\_WLO\\_MGMT@epa.gov](mailto:OGC_WLO_MGMT@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Please let me know if WLO has issues or comments on the response below regarding this inquiry about the Yazoo pump final EIS (or if there is another law office that had an interest). Thanks.

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 *office*  

Ex. 6 Personal Privacy (PP) *cell*

---

**From:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 2:37 PM  
**To:** regionalpress <[regionalpress@epa.gov](mailto:regionalpress@epa.gov)>  
**Cc:** Risley, David <[Risley.David@epa.gov](mailto:Risley.David@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>; Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>; Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

## Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 11:34 AM  
**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table,



Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>

**Sent:** Tuesday, December 1, 2020 11:27 AM

**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**

Water Reporter

[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (c)

202-446-0468 (p)

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**Environment & Energy Publishing, LLC**

122 C Street, NW, Suite 722, Washington, DC 20001

EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

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**From:** Moody, Christina [Moody.Christina@epa.gov]  
**Sent:** 12/14/2020 5:08:46 PM  
**To:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Gehron, Katherine [Gehron.Katherine@epa.gov]; Woods, Terry [Woods.Terry@epa.gov]; Drummond, Laura [Drummond.Laura@epa.gov]  
**Subject:** Re: GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update

Thanks Benita. Lee, did you have any edits or concerns?

Christina J. Moody | Acting Associate Director  
Resource Management Staff  
USEPA | OW  
Moody.Christina@epa.gov

On Dec 14, 2020, at 12:07 PM, Best-Wong, Benita <Best-Wong.Benita@epa.gov> wrote:

Hi Christina – I'm good with this update.

Regards,  
Benita

Benita Best-Wong  
Deputy Assistant Administrator  
Office of Water  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
202-566-1159

---

**From:** Moody, Christina <Moody.Christina@epa.gov>  
**Sent:** Monday, December 14, 2020 11:28 AM  
**To:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Gehron, Katherine <Gehron.Katherine@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Drummond, Laura <Drummond.Laura@epa.gov>  
**Subject:** GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update  
**Importance:** High

**Good Morning Benita and Lee –**

**Pushing this review request to the top of your boxes for response. Please advise if you have questions or edits on this exercise and let us know if you concur.**

**Kind Regards,**



Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)

---

**From:** Moody, Christina

**Sent:** Thursday, December 10, 2020 7:28 PM

**To:** Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Cc:** Vazquez, Sharon <[Vazquez.Sharon@epa.gov](mailto:Vazquez.Sharon@epa.gov)>; Gehron, Katherine <[Gehron.Katherine@epa.gov](mailto:Gehron.Katherine@epa.gov)>;

Woods, Terry <[Woods.Terry@epa.gov](mailto:Woods.Terry@epa.gov)>; Drummond, Laura <[Drummond.Laura@epa.gov](mailto:Drummond.Laura@epa.gov)>

**Subject:** Review Requested: OW's FY 2020 Reporting Requirements Update

Hello Lee and Benita,

OCFO requested OW to provide updates for FY 2020 reporting requirements. Attached (and pasted below) are the draft FY 2020 reporting requirement updates for your review. Please let us know if you have edits, questions, or concerns.

### Status of FY 2020 Congressional Reporting Requirements

#	Report Heading	Office	Explanatory/Reporting Language	Due to Congress	Status	Date Completed
12	Protecting School Children from Lead	OW	The Committee considers protecting children from lead exposure to be a top priority. The Committee urges the Agency to expand efforts by the Agency to reduce childhood exposure to lead in drinking water at schools and childcare facilities. The Committee directs the Agency to study the merits of issuing separate requirements for public water systems to conduct lead monitoring in schools and child care facilities that they serve. The study should consider the frequency at which water systems conduct monitoring at schools and how water systems should share results with schools and communities. The Committee directs the Administrator to publish a report following completion of the study with findings and conclusions related towards the feasibility of the monitoring	No Date Specified	Ex. 5 Deliberative Process (DP)	



			requirement. (House Report page 91)			
24	Clean Water State Revolving Fund	OW	<p>The Committee notes that wastewater treatment facilities are some of the largest industrial users of electricity in the nation, and has provided Green Project Reserve (GPR) funds as part of the Clean Water State Revolving Fund to encourage states to improve energy and water efficiency at treatment facilities. In order to better track the ways in which states are utilizing GPR funds, the Committee directs the Agency to develop a uniform reporting framework which states may use to report their GPR spending, and urges the Agency to include tools and metrics that allow states to quantify estimated energy and water savings benefits of these investments. The Agency is directed to brief the Committee on its progress in developing this guidance within 180 days of enactment.</p>	Wednesday, June 17, 2020	<div>Ex. 5 Deliberative Process (DP)</div>	



31	Interagency Coordination on Flood Reduction	OW	The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.	Sunday, January 19, 2020	Ex. 5 Deliberative Process (DP)
33	GLRI Annual Report (FY18)	OW	Not in appropriation bill but this is an annual requirement for the GLRI program. OW submitted the FY17 annual report last year so this year we are expecting the FY18 annual report.	No Date Specified	Ex. 5 Deliberative Process (DP)

Kind Regards,

Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC |  
20460



Moody.Christina@epa.gov



Message

---

**From:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]  
**Sent:** 12/14/2020 5:07:52 PM  
**To:** Moody, Christina [Moody.Christina@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Gehron, Katherine [Gehron.Katherine@epa.gov]; Woods, Terry [Woods.Terry@epa.gov]; Drummond, Laura [Drummond.Laura@epa.gov]  
**Subject:** RE: GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update

Hi Christina – I'm good with this update.

Regards,  
Benita

Benita Best-Wong  
Deputy Assistant Administrator  
Office of Water  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
202-566-1159

---

**From:** Moody, Christina <Moody.Christina@epa.gov>  
**Sent:** Monday, December 14, 2020 11:28 AM  
**To:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Gehron, Katherine <Gehron.Katherine@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Drummond, Laura <Drummond.Laura@epa.gov>  
**Subject:** GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update  
**Importance:** High

Good Morning Benita and Lee –

Pushing this review request to the top of your boxes for response. Please advise if you have questions or edits on this exercise and let us know if you concur.

Kind Regards,

Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)

---

**From:** Moody, Christina  
**Sent:** Thursday, December 10, 2020 7:28 PM  
**To:** Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Vazquez, Sharon <[Vazquez.Sharon@epa.gov](mailto:Vazquez.Sharon@epa.gov)>; Gehron, Katherine <[Gehron.Katherine@epa.gov](mailto:Gehron.Katherine@epa.gov)>; Woods, Terry <[Woods.Terry@epa.gov](mailto:Woods.Terry@epa.gov)>; Drummond, Laura <[Drummond.Laura@epa.gov](mailto:Drummond.Laura@epa.gov)>  
**Subject:** Review Requested: OW's FY 2020 Reporting Requirements Update

Hello Lee and Benita,



OCFO requested OW to provide updates for FY 2020 reporting requirements. Attached (and pasted below) are the draft FY 2020 reporting requirement updates for your review. Please let us know if you have edits, questions, or concerns.

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24	Clean Water State Revolving Fund	OW	<p>The Committee notes that wastewater treatment facilities are some of the largest industrial users of electricity in the nation, and has provided Green Project Reserve (GPR) funds as part of the Clean Water State Revolving Fund to encourage states to improve energy and water efficiency at treatment facilities. In order to better track the ways in which states are utilizing GPR funds, the Committee directs the Agency to develop a uniform reporting framework which states may use to report their GPR spending, and urges the Agency to include tools and metrics that allow states to quantify estimated energy and water savings benefits of these investments. The Agency is directed to brief the Committee on its progress in developing this guidance within 180 days of enactment.</p>	Wednesday, June 17, 2020	<div>Ex. 5 Deliberative Process (DP)</div>	
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			due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.		Ex. 5 Deliberative Process (DP)	
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Kind Regards,

Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)



Message

---

**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 12/1/2020 7:51:01 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Thanks Lee! I'll pass these back to Brandi.

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Tuesday, December 01, 2020 2:48 PM  
**To:** Risley, David <Risley.David@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

My comments below.

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:42 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee, any red flags with this draft Region 4 response on Yazoo?

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell Ex. 6 Personal Privacy (PP)

---

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Sent:** Tuesday, December 01, 2020 2:37 PM  
**To:** regionalpress <regionalpress@epa.gov>  
**Cc:** Risley, David <Risley.David@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Table, Melba <Table.Melba@epa.gov>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.



# Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 11:34 AM  
**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>  
**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>  
**Sent:** Tuesday, December 1, 2020 11:27 AM  
**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>  
**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

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**Hannah M. Northey**  
Water Reporter  
[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (C)  
202-446-0468 (p)

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**Environment & Energy Publishing, LLC**  
122 C Street, NW, Suite 722, Washington, DC 20001  
EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

**From:** Moody, Christina [Moody.Christina@epa.gov]  
**Sent:** 12/14/2020 4:27:45 PM  
**To:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Gehron, Katherine [Gehron.Katherine@epa.gov]; Woods, Terry [Woods.Terry@epa.gov]; Drummond, Laura [Drummond.Laura@epa.gov]  
**Subject:** GENTLE REMINDER: Review Requested: OW's FY 2020 Reporting Requirements Update

**Importance:** High

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**Kind Regards,**

**Christina J. Moody | Acting Associate Director  
Office of Water – Resource Management Staff  
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460  
Moody.Christina@epa.gov**

---

**From:** Moody, Christina  
**Sent:** Thursday, December 10, 2020 7:28 PM  
**To:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Gehron, Katherine <Gehron.Katherine@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Drummond, Laura <Drummond.Laura@epa.gov>  
**Subject:** Review Requested: OW's FY 2020 Reporting Requirements Update

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			<p>schools and child care facilities that they serve. The study should consider the frequency at which water systems conduct monitoring at schools and how water systems should share results with schools and communities. The Committee directs the Administrator to publish a report following completion of the study with findings and conclusions related towards the feasibility of the monitoring requirement. (House Report page 91)</p>			
24	Clean Water State Revolving Fund	OW	<p>The Committee notes that wastewater treatment facilities are some of the largest industrial users of electricity in the nation, and has provided Green Project Reserve (GPR) funds as part of the Clean Water State Revolving Fund to encourage states to improve energy and water efficiency at treatment facilities. In order to better track the ways in which states are utilizing GPR funds, the Committee directs the Agency to develop a uniform reporting framework which states may use to report their GPR spending, and urges the Agency to include tools and metrics that allow states to quantify estimated energy and water savings benefits of these investments. The Agency is directed to brief the Committee on its progress in developing this guidance within 180 days of enactment.</p>	Wednesday, June 17, 2020	<div>Ex. 5 Deliberative Process (DP)</div>	



					Ex. 5 Deliberative Process (DP)	
31	Interagency Coordination on Flood Reduction	OW	<p>The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.</p>	Sunday, January 19, 2020	Ex. 5 Deliberative Process (DP)	
33	GLRI Annual Report (FY18)	OW	<p>Not in appropriation bill but this is an annual requirement for the GLRI program. OW submitted the FY17 annual report last year so this year we are expecting the FY18 annual report.</p>	No Date Specified	Ex. 5 Deliberative Process (DP)	



					<div>Ex. 5 Deliberative Process (DP)</div>	
--	--	--	--	--	--	--

Kind Regards,

**Christina J. Moody | Acting Associate Director**  
**Office of Water – Resource Management Staff**  
**U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460**  
[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/25/2020 4:35:50 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** FW: Revised letter for Yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx

Hi Lee and David,

Attached is some draft language Leif has suggested to address **Ex. 5 AC/DP** Sending for your input.

Thank you for your help on this,  
Mary

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Wednesday, November 25, 2020 11:07 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>  
**Subject:** FW: Revised letter for Yazoo

Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the **Ex. 5 AC/DP** that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

---

**From:** Creswell, Michael <Creswell.Michael@epa.gov>  
**Sent:** Wednesday, November 25, 2020 10:52 AM  
**To:** Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Revised letter for Yazoo

Heidi,

Attached is the revised draft letter with the regional administrator's proposed changes.

Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

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Message

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**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 12/1/2020 7:42:09 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee, any red flags with this draft Region 4 response on Yazoo?

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Sent:** Tuesday, December 01, 2020 2:37 PM  
**To:** regionalpress <regionalpress@epa.gov>  
**Cc:** Risley, David <Risley.David@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Table, Melba <Table.Melba@epa.gov>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

# Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <Pinkney.James@epa.gov>  
**Sent:** Tuesday, December 1, 2020 11:34 AM  
**To:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Table, Melba <Table.Melba@epa.gov>  
**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James



---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>  
**Sent:** Tuesday, December 1, 2020 11:27 AM  
**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>  
**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**  
Water Reporter  
[hnorthey@eenews.net](mailto:hnorthey@eenews.net)  

Ex. 6 Personal Privacy (PP) (C)

  
202-446-0468 (p)

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**Environment & Energy Publishing, LLC**  
122 C Street, NW, Suite 722, Washington, DC 20001  
EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 6/18/2020 8:26:50 PM  
**To:** Ross, David P [ross.davidp@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Aguirre, Janita [Aguirre.Janita@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Final responses to QFRs from Sept. 2019 T&I (Ross) hearing  
**Attachments:** Final EPA Responses to QFRs\_House T&I CWA Hearing 09-18-19.pdf

All,

Attached are the final responses to QFRs from the Sept. 2019 T&I hearing that have been sent to the Committee. The peak flows oversight letter we sent prior to the hearing that is referenced in our responses is not attached.

Thank you for all your work on these. It's nice to get these completed and to the Committee.

I will also send this final version to the Offices.

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Blevins, John [Blevins.John@epa.gov]  
**Sent:** 12/1/2020 3:52:50 PM  
**To:** Fite, Mark [Fite.Mark@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: EPA Comments on Yazoo Backwater DSEIS

Ditto from me...thanks for all of the hard work on this issue under tight timelines...

John

John Blevins  
Acting DRA  
US EPA Region 4  
980 College Station Road  
Athens GA 30605

Ex. 6 Personal Privacy (PP) cell  
706-355-8549 office  
404-562-8231 (Atlanta Office number)

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LSASD Vision Statement: To be a solutions oriented organization, and seen as a leader in sound science through innovation, responsive customer service, and cutting-edge expertise.

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---

**From:** Fite, Mark <Fite.Mark@epa.gov>

**Sent:** Tuesday, December 1, 2020 10:46 AM

**To:** Blevins, John <Blevins.John@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Ainslie, William <Ainslie.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Yesmant, Christopher <Yesmant.Christopher@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Buzzelle, Stanley <Buzzelle.Stanley@epa.gov>; Martin, KarenL <Martin.KarenL@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kajumba, Ntale <Kajumba.Ntale@epa.gov>; Goodin, John <Goodin.John@epa.gov>

**Cc:** Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

**Subject:** FW: EPA Comments on Yazoo Backwater DSEIS

Hello Team,

Region 4 successfully and timely submitted our comment letter on the Yazoo DSEIS to the Corps of Engineers last night (see attached). We could not have done it without you! Thanks to each of you for your collaboration and assistance.

Sincerely,

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740

---

**From:** Fite, Mark

**Sent:** Monday, November 30, 2020 9:23 PM

**To:** [YazooBackwater@usace.army.mil](mailto:YazooBackwater@usace.army.mil)

**Cc:** Parrish, Kenneth D Jr CIV USARMY CEMVK (US) <[Kent.D.Parrish@usace.army.mil](mailto:Kent.D.Parrish@usace.army.mil)>; Thames, A Sara CIV USARMY CEMVN (USA) <[sara.thames@usace.army.mil](mailto:sara.thames@usace.army.mil)>

**Subject:** EPA Comments on Yazoo Backwater DSEIS

Please find attached EPA's comments on the subject project.

Thank you!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303



fite.mark@epa.gov  
404.562.9740



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/24/2020 3:41:30 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: My comments

Good morning,

I have not received any other comments on this – So will send to my staff to integrate... Please let me know if you have other input or comments and we will be happy to include. Thanks for your help.

Happy Thanksgiving!  
Mary

---

**From:** Walker, Mary  
**Sent:** Thursday, November 19, 2020 2:21 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** RE: My comments

You all may be using other documents, but I have added my comments to Lee's – Attached.

Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, November 19, 2020 10:33 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** My comments

Mary, David, Brittany and Kevin,

Here are my comments on the proposed Yazoo letter. Should we work off of this redline or each send our own to the team?

Lee



Message

---

**From:** Fite, Mark [Fite.Mark@epa.gov]  
**Sent:** 12/1/2020 3:45:46 PM  
**To:** Blevins, John [Blevins.John@epa.gov]; Gettle, Jeanneanne [Gettle.Jeanneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** FW: EPA Comments on Yazoo Backwater DSEIS  
**Attachments:** Yazoo DSEIS Cover Letter Final 11.30.20 (002).pdf; Yazoo DSEIS Enclosure.pdf

Hello Team,

Region 4 successfully and timely submitted our comment letter on the Yazoo DSEIS to the Corps of Engineers last night (see attached). We could not have done it without you! Thanks to each of you for your collaboration and assistance.

Sincerely,

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740

---

**From:** Fite, Mark  
**Sent:** Monday, November 30, 2020 9:23 PM  
**To:** YazooBackwater@usace.army.mil  
**Cc:** Parrish, Kenneth D Jr CIV USARMY CEMVK (US) <Kent.D.Parrish@usace.army.mil>; Thames, A Sara CIV USARMY CEMVN (USA) <sara.thames@usace.army.mil>  
**Subject:** EPA Comments on Yazoo Backwater DSEIS

Please find attached EPA's comments on the subject project.

Thank you!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4



61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

November 30, 2020

Colonel Robert A. Hilliard  
U.S. Army Corps of Engineers, Vicksburg District  
ATTN: CEMVK-PPMD  
4155 East Clay Street, Room 248  
Vicksburg, Mississippi 39183

Dear Colonel Hilliard:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act, the U.S. Environmental Protection Agency has reviewed the U.S. Army Corps of Engineers (USACE) Vicksburg District's Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Area Pump project (CEQ No. 2020205). The DSEIS is a supplement to the Final SEIS for the Yazoo Pumps Project issued in 2007 (2007 FSEIS).

The purpose of the Yazoo Pumps Project is to alleviate flooding in the Yazoo Backwater Area, an approximately 630,000-acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi. The EPA fully supports the purpose of the project to reduce flood damages in the Yazoo Backwater Area. The DSEIS provides information and analysis regarding a similar but different Yazoo Pumps Project than was previously analyzed. It also provides new information on the project's potential environmental impacts to wetlands, endangered species, fish and wildlife, water quality, downstream areas, and environmental justice populations. The proposed project involves a pumping station with a capacity of 14,000 cfs and a pump-on elevation of 87 feet NGVD. It will be newly located at Deer Creek.

EPA has determined that the proposed project is not subject to EPA's 2008 Final Determination. Importantly, the plan described in the 2020 DSEIS includes a number of key features that distinguish it from the Plans prohibited by EPA's 2008 Final Determination: (1) the 14,000 cfs pump will now be located near Deer Creek, approximately eight miles east of the Steele Bayou site at issue in the 2007 FSEIS; (2) the Steele Bayou flood control gate operations will maintain water levels between 68.5 and 70 feet; (3) the pump facility will use natural gas instead of diesel power and add a pump station and appurtenances; (4) the plan will involve the installation of thirty-four low flow wells adding 0.1-0.2 cfs to augment stream flows in multiple stream systems within the Big Sunflower-Steele Bayou watershed; and (5) a new adaptive management plan is included.

Also, EPA's 2008 Final Determination "prohibits, pursuant to section 404(c) of the CWA, the specification of the subject wetlands and other waters of the United States *as described in the FSEIS as a disposal site for the discharge of dredged or fill material for the purpose of construction of FSEIS Plans 3 through 7, and Modified Plan 6.*"<sup>1</sup> The text therefore limits the prohibition to those wetland and waters that were specifically described as the disposal site for the identified plans. Notably, Region 4's 2008 Recommendation Determination had recommended including "a prohibition encompassing a

<sup>1</sup> Final Determination p.73 (emphasis added).



six county area and ‘...any similar pump project...’).<sup>2</sup> EPA, however, explicitly rejected this geographic approach in the Final Determination by tying the scope of the veto to the identified FEIS plans themselves, explaining this change as a “modifi[cation]” and a “narrowing” of the scope of the RD to “underscore[] our sincere interest to work collaboratively with interested parties to consider alternative forms of flood protection.”<sup>3</sup> The Agency concluded that the 2008 Final Determination “*only* prohibits the construction of FSEIS Plans 3 through 7 and Modified Plan 6.”<sup>4</sup> Given the express decision of the Agency to narrowly tailor the Final Determination to the specific enumerated projects and the differences between those projects and the proposed project described by the Corps in the 2020 DSEIS, the proposed project is not prohibited by the Final Determination.

There are several areas where additional clarification may be required to meet the requirements of both Corps and EPA regulations under Section 404 of the Clean Water Act. The Corps’ analysis should reflect a similar degree of specificity as to the scope of Waters of the United States impacted and the scope, timing, and certainty of mitigation required to compensate for unavoidable impacts as would be required of a private party applying to the Corps for a 404 permit to undertake a similar project.

EPA is a cooperating agency on the proposed project and submitted scoping comments to USACE on June 16, 2020. We participated in two interagency meetings held on May 19, 2020 and May 29, 2020 respectively. At the USACE’s request, EPA also submitted comments regarding specific models that would be used to assess natural resources on June 12, 2020. Based on our review of the DSEIS and associated appendices, we are providing comments in the enclosure for your consideration.

EPA appreciates your coordination of the proposed project. If you have any further questions, you may contact Ntale Kajumba, Chief of the NEPA Section at (404) 562-9620 or kajumba.ntale@epa.gov.

Sincerely,

MARY  
WALKER

Digitally signed  
by MARY WALKER  
Date: 2020.11.30  
20:56:46 -05'00'

Mary S. Walker  
Regional Administrator

Enclosure

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<sup>2</sup> Final Determination Appendix 1 Response to Comments, p.20

<sup>3</sup> *Id*

<sup>4</sup> *Id.* (emphasis added).



**Enclosure**  
**EPA Comments on the Draft Supplement No. 2**  
**to the 1982 Yazoo Area Pumps Project**  
**Final Environmental Impact Statement**

The 2020 DSEIS provides information and analysis regarding a similar but different Yazoo Pumps project than that previously analyzed and vetoed pursuant to the Clean Water Act 404(c).<sup>1</sup> It also provides new information on potential environmental impacts to wetlands, endangered species, fish and wildlife, water quality, downstream areas, and environmental justice populations. The new project includes the following changes: (1) the 14,000 cfs pump will now be located near Deer Creek, approximately eight miles east of the Steele Bayou site at issue in the 2007 FSEIS; (2) the Steele Bayou flood control gate operations will maintain water levels between 68.5 and 70 feet; (3) the pump facility will use natural gas instead of diesel power and add a pump station and appurtenances; (4) the plan will involve the installation of thirty-four low flow wells adding 0.1-0.2 cfs to augment stream flows in multiple stream systems within the Big Sunflower-Steele Bayou watershed; and (5) a new adaptive management plan is included. In addition to the low flow wells and new adaptive management plan, the Corps also proposes to acquire perpetual conservation easements of up to 2,700 acres and to acquire 2,405 acres in fee for reforestation for mitigation.

EPA appreciates the USACE's coordination efforts on the proposed project and we offer the following comments and recommendations on the 2020 DSEIS for your consideration.

**I. Clean Water Act Section 404(b)(1) Evaluation:**

The Clean Water Act (CWA) Section 404(b)(1) Evaluation specifies whether a proposed project that involves the discharge of dredged or fill material into waters of the United States complies with the CWA Section 404(b)(1) Guidelines (Guidelines).<sup>2</sup> The Guidelines are the substantive environmental criteria used to evaluate proposed discharges of dredged or fill material and consider the potential short-term and long-term effects of a proposed discharge on the physical, chemical, and biological components of the aquatic environment.<sup>3</sup> EPA recognizes that the 2020 DSEIS is a supplemental evaluation with a limited scope. The DSEIS evaluates a no-action alternative and a structural alternative with non-structural features. A 404(b)(1) Evaluation relies on a determination of the scope of waters of the U.S. potentially affected by the proposed project. Based upon our review of the DSEIS, it appears that the USACE has not completed a jurisdictional determination for the areas of project impact within the Yazoo Backwater Area (YBA) consistent with current regulations.

**A. Section 230.10(c) – Evaluation of Significant Degradation**

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<sup>1</sup> The EPA found the statement “The proposed plan is Plan 5 from the 2007 FEIS” (Appendix G, pg 123) to be extremely confusing since the proposed project, given the relocation of the pumps, changes in the mitigation plan and many other project changes, while within the scope of the Yazoo Pump Project's authorization, clearly reflect a new project for purposes of EPA review. The Corps has informed us that this statement, which is incongruous in relation to the remainder of the document, was made in error.

<sup>2</sup> 40 C.F.R. § 230.12(a).

<sup>3</sup> 40 C.F.R. § 230.11.



The Guidelines prohibit authorization of a proposed discharge that causes or contributes to significant degradation of the aquatic ecosystem.<sup>4</sup> The evaluation of the potential for significant degradation “shall be based upon appropriate factual determinations, evaluations, and tests” as described in 40 C.F.R. § 230.11 after consideration of potential impacts and effects identified in the Guidelines “with special emphasis on the persistence and permanence of the effects.”<sup>5</sup> Of particular importance in this case for determining compliance with the Guidelines is the evaluation of the potential direct, secondary, and cumulative effects of the proposed discharges on wetlands,<sup>6</sup> fish and other aquatic organisms,<sup>7</sup> and water quality.<sup>8</sup>

1. **Wetlands:** Construction of the proposed pumping station would directly impact 193.52 acres of wetlands and other waters (2020 DSEIS, Appendix L). Operation of the proposed pumping station will also result in secondary effects on wetlands from changes in the frequency and duration of flood events experienced by these wetlands in the YBA.<sup>9</sup> These effects will alter the ecological functions provided by affected wetlands. The interagency field-based Environmental Monitoring and Assessment Program (EMAP) effort determined that there are approximately 216,000 acres of wetlands in the YBA (2007 FSEIS, Main Report) and this estimate has not changed in the 2020 DSEIS.<sup>10</sup>

#### Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the FSEIS and final 404(b)(1) Evaluation:

- That the Corps complete a full delineation of the scope of the impacts to Waters of the United States under existing regulations.
- That the wetland impact analysis evaluates the proposed project’s potential effects on wetlands based on expected changes in flood duration and frequency.<sup>11</sup> This analysis should also identify the scope of wetlands and other waters of the U.S. that will experience direct, secondary, and cumulative effects.
- That the FSEIS evaluate how the pumps project would impact wetlands that currently experience  $\geq 7$  days of flood inundation.<sup>12</sup>

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<sup>4</sup> 40 C.F.R. § 230.10(c).

<sup>5</sup> *Id.*

<sup>6</sup> 40 C.F.R. § 230.41.

<sup>7</sup> 40 C.F.R. § 230.31.

<sup>8</sup> 40 C.F.R. § 230.22.

<sup>9</sup> For the purposes of NEPA, these effects are reasonably foreseeable and have a close causal relationship to the proposed action.

<sup>10</sup> As previously noted, a 404(b)(1) Evaluation relies on a determination of the scope of waters of the U.S. potentially affected by the proposed project; the USACE has not completed a jurisdictional determination for the areas of project impact consistent with current regulations.

<sup>11</sup> The kinds of anticipated changes in flood duration and frequency associated with the proposed pumps project would result in impacts to the type of functions currently performed by potentially affected wetlands and the degree to which those functions are performed and therefore, we recommend that these impacts be evaluated as they can be large even when a wetland persists (i.e., continues to meet the minimum federal criteria for wetland hydrology).

<sup>12</sup> This analysis is important because there is a large body of scientific information that describes how shorter duration flooding events are integral to a number of the ecologically important functions provided by potentially affected wetlands (e.g., fish spawning, pollutant removal, organic carbon export); these changes are not captured in the 2020 DSEIS. We recommend this analysis identify how many of these wetlands would no longer experience  $\geq 7$  days of flooding and how many of these wetlands would experience a decrease in flood duration but continue to experience  $\geq 7$  days of flooding.



- That the wetland impact analysis evaluate all flooded wetlands that are in the 5-year floodplain.
- That the FSEIS evaluate how many wetlands would no longer be within the 2-year and 5-year floodplains with the pumps project implemented.
- That the Hydrogeomorphic (HGM) assessment classify wetlands in the YBA according to Smith and Klimas (2002), evaluate the anticipated functional impacts to these wetlands, including when impacts convert wetlands from one subclass to another, and ensure that proposed compensatory mitigation addresses the specific functional losses of impacted wetlands.

If the USACE believes that the current information in the DSEIS is sufficient to address the above, we request that the FSEIS include rationale as to why the existing documentation adequately addresses the requirements of the Guidelines.

**2. Fish and Other Aquatic Organisms:** As part of evaluating the project's likely impacts on fish and other aquatic organisms, the 2020 DSEIS estimates impacts on fish spawning and rearing habitat (Appendix F-8). Table 1 summarizes the findings from this evaluation. However, limited information is provided explaining how key values, including the spawning and rearing habitat assessment areas, were generated. It is not clear why the spawning and rearing impact assessment areas in the 2020 DSEIS (i.e., 10,521 acres and 18,053 acres, respectively) which are related to the wetland impact assessment area (i.e., 82,774 acres) are significantly smaller than the wetland impact assessment area.<sup>13</sup> This is an important clarification because prior data also indicate that between 2007 and 2020 there has been a 30% decrease in the size of the spawning habitat impact assessment area and a 133% decrease in the size of the rearing habitat impact assessment area (2007 FSEIS, Appendix 11 and 2020 DSEIS, Appendix F-8). For these reasons it is unclear whether the pumps project's potential impacts to fish and other aquatics have been fully assessed.

Table 1. Summary of spawning and rearing habitat impact assessment in 2020 DSEIS

Impact Type	2020 DSEIS
<b>Spawning Habitat</b>	Assessment Area: 10,521 acres
	Baseline Average Annual Habitat Units (AAHUs): 10,344
	Affected Acres: 2,404
	Estimates loss of 2,838 AAHUs and indicates this loss could be addressed by 3,998 acres of compensatory mitigation (reforestation)
<b>Rearing Habitat</b>	Assessment Area: 18,053 acres
	Baseline AAHUs: 16,269
	Affected Acres: 3,861
	Estimates loss of 3,232 AAHUs and indicates this loss could be addressed by 4,553 acres of compensatory mitigation (reforestation)
	Devaluation of lost AAHUs: The 2020 DSEIS indicates that due to hypoxia the value of the lost spawning and rearing habitat

<sup>13</sup> We have also already raised concerns that the assessment area used to evaluate the secondary (indirect) impacts to wetlands in the 2020 DSEIS may not reflect the full geographic scope of wetland areas potentially impacted by the pumps project (see Wetlands discussion above).



	should be devalued. A weighting factor of 0.6 is applied that reduces the lost spawning AAHUs from 2,828 to 1,703 and the lost rearing AAHUs from 3,232 to 1,939. This reduces the compensation acreage to 2,399 to address spawning losses and 2,732 to address rearing losses.
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#### Recommendation:

Based on the above assessment, EPA recommends the FSEIS and final 404(b)(1) Evaluation:

- Provide a full description of the analysis of impacts on fish and other aquatic organisms and clarify how the values in the spawning and rearing habitat assessment were determined, including the methodology, assumptions, calculations, and uncertainties.
- Identify where values changed between 2007 and 2020 analyses and clearly explain to what extent and why these changes are the result of the application of new data/analysis, changes in the assumptions or framework of the assessment, changes in conditions on the ground, and/or other factors.
- Clarify the assumptions and use of the weighting factor to reduce the loss of AAHUs in the 2020 spawning and rearing habitat impact analysis.

**3. Water Quality:** The 2020 DSEIS includes a large amount of baseline water quality data from the Yazoo River Basin. Analysis of this water quality data focuses on current trends in low dissolved oxygen and high nutrient concentrations observed in the main stems of Steele Bayou and Big Sunflower Basins. This data has raised concerns regarding the degradation of water quality in the YBA. Previously, USACE recommended reforestation of up to 40,000 acres and maintaining higher minimum ponding levels of up to 3 feet behind the flood gates during low flow periods to address these water quality issues and provide benefits to fish and other aquatic organisms. However, portions of the 2020 DSEIS (Appendix F-8) now indicate that reforestation is not likely to improve water quality in ways that would improve support for fish and other aquatic organisms while other portions continue to indicate that wetland reforestation/restoration will “provide significant long-term benefits to water quality” (see Appendix L). The 2020 DSEIS also now indicates that maintaining higher ponding levels would be detrimental to fish and other aquatic organisms because of concerns regarding low dissolved oxygen. Statements about the water quality effects of reforestation and minimum ponding levels appear to reflect different views about strategies for addressing water quality concerns. The 2020 DSEIS also makes conflicting statements regarding whether the operation of the pumps would affect water quality, with some parts of the document indicating that construction and operation of the pumps “are not anticipated to cause long-term changes in the existing water quality within the study area” (Appendix L), while others state that operation of the pumps would improve current conditions regarding dissolved oxygen (e.g., Appendix I). These statements regarding water quality benefits from the operation of the pumps, are not supported by data to quantify beneficial or adverse effects.

In addition, the USACE has observed declining river low flow stages, in the late summer or early autumn, over the last 90 years in the Yazoo Basin. According to the USACE, these reduced stages result from the completion of flood control projects and agricultural practices. USACE indicates that healthy baseline water quality standards cannot be maintained without adequate year-round flow in the aquatic systems. In response, the 2020 DSEIS proposes a series of groundwater wells along the Mainline Levee to supply water to streams in the YBA during low flow periods (see discussion in Mitigation section



below). While the 2020 DSEIS includes qualitative statements indicating that the proposed wells will improve flow, water quality, and biological conditions, as discussed in the Mitigation section below, no data or quantitative estimates are included to support these statements.

Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the FSEIS:

- Include additional information describing the extent to which the pumps project and the wells would impact water quality. Evaluate whether operation of the pumps will adversely affect the existing low-flow problems (e.g., whether pumps may remove water at a faster rate than groundwater recharge).

**4. Cumulative and Secondary Effects:** Cumulative effects are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material; although the impact of a particular discharge may constitute a minor change in itself, “the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.”<sup>14</sup> Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.<sup>15</sup>

Recommendation:

EPA recommends that the USACE incorporate the following information in the FSEIS and final 404(b)(1) Evaluation:

- The cumulative effects analysis considers the historic wetland losses/degradation in the Lower Mississippi River Valley, which has already lost over 80 percent of its bottomland forested wetlands (DOI 1988) and in the Mississippi Delta region in particular. For instance, the 2020 DSEIS finds that the completion of numerous flood control projects in the YBA has already lowered the median  $\geq 5.0\%$  flood duration elevation by approximately one to three feet resulting in impacts to the hydrology of tens of thousands of acres of wetlands in the YBA and the pumps project would result in additional impacts to tens of thousands of acres of wetlands in the YBA (2020 DSEIS, Appendix F-5). These effects contribute to habitat changes for a range of wildlife species (e.g., waterfowl, shorebirds, and/or aquatic dependent mammals) which have contributed to population declines and may impact the ability of some species to successfully migrate. We recommend that the cumulative effects analysis also consider these kinds of impacts on the productivity of the aquatic ecosystem.
- The secondary effects analysis includes consideration of the effects on wetlands and other aquatic resources associated with the operation of the pumps project. Such effects can also cause changes to the availability of wildlife food resources (e.g., plant material, insects, amphibians), in addition to other wetland functional changes, and should be considered.

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<sup>14</sup> 40 C.F.R. § 230.11(g).

<sup>15</sup> 40 C.F.R. § 230.11(h).



- Additional analysis consistent with 40 C.F.R. § 230.11(b) should be included in the FSEIS to evaluate the potential effects of the pumps project on water levels in the Yazoo River. According to Appendix L of the 2020 DSEIS, water levels on the Yazoo River side of the Deer Creek Pump site would be impacted by approximately 0.25 foot during pump operation, however Appendix G indicates the estimate was made on the Yazoo River side of the Steele Bayou site. We recommend that this be clarified.
  - EPA recommends this analysis evaluate the effects of discharging water from the YBA into the Yazoo River on homes, communities, and/or infrastructure along the Yazoo River, particularly in areas downstream of the Deer Creek site's pump discharge point (e.g., Vicksburg).

## B. Section 230.10(d) – Evaluation of Minimization and Compensation Measures

The Guidelines prohibit discharges that do not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem.<sup>16</sup> This requirement includes appropriate and practicable compensatory mitigation to offset unavoidable environmental impacts associated with discharges permitted under CWA Section 404.<sup>17</sup>

**1. Compensatory Mitigation:** The Guidelines require appropriate and practicable compensatory mitigation to offset unavoidable impacts to waters of the U.S. and require that mitigation plans, such as the plan proposed in the 2020 DSEIS, be based on actual proposed mitigation sites. The USACE should provide a mitigation plan that is as detailed and specific as would be required by a private party applying to the USACE for a Section 404 permit.<sup>18</sup> As discussed below, the compensatory mitigation plan described in the 2020 DSEIS includes a number of deficiencies that would preclude a private party from receiving a Section 404 permit. The compensatory mitigation plan proposed in the 2020 DSEIS<sup>19</sup> includes two components:<sup>20</sup>

- 1) Reforestation/restoration of 2,405 acres of agricultural lands to wetlands to offset approximately 38,774 acres of wetland impacts as well as impacts to terrestrial resources, wildlife, waterfowl, and a portion of the impacts to fish and other aquatic organisms; and
- 2) Installation of up to 34 wells to irrigate streams during low-flow periods to offset the remaining impacts to fish and other aquatic organisms.

According to the 2020 DSEIS, specific compensation sites for reforestation have not been identified. The proposal relies on the ability to secure sites in the future from willing landowners in locations where flood frequency and duration will be unaffected by the pumps project. There is also uncertainty

<sup>16</sup> 40 C.F.R. §§ 230.10(d); 230.12(a)(3)(iii).

<sup>17</sup> 40 C.F.R. § 230.12(a).

<sup>18</sup> Pursuant to Section 2036 of the Water Resources Development Act (WRDA) of 2007, “the Secretary shall ensure that the mitigation plan for each water resources project complies with the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.” 33 U.S.C. § 2283(d)(3)(A). We recommend the EIS also describe how the proposed compensatory mitigation for the pumps project is consistent with the other requirements of Section 2036, including those related to mitigation site identification, acquisition, monitoring, and contingency planning. 33 U.S.C. § 2283(d)(3)-(5).

<sup>19</sup> There are still 1,490 acres of reforestation yet to be acquired to offset the impacts of other past discharges (2020 DSEIS, Main Report).

<sup>20</sup> As discussed above, these mitigation requirements appear to be based on an incomplete assessment of likely impacts. Mitigation requirements should be based upon the full scope of likely impacts, to include any changes resulting from the analyses requested above.



regarding the number of wells to be installed and if the potential sites can be secured from willing landowners.<sup>21</sup> Due to the lack of site-specific mitigation plans, it is unclear to what extent these mitigation measures would offset potential adverse impacts.

Regarding the proposed reforestation, regulations require that mitigation plans be based on actual mitigation sites.<sup>22</sup> The projected benefits of the reforestation are based largely on assumptions about the location and condition of unidentified mitigation sites (e.g., the 2020 DSEIS does not include data and information based on an HGM assessment of specific proposed compensation sites to support estimation of benefits). The proposed reforestation also does not ensure that specific functions will be adequately replaced because all functions are lumped together in the Average Annual Functional Capacity Unit calculation and hydrologic source and periodicity are uncertain. The 2020 DSEIS indicates that reforestation would not effectively offset impacts to fish and other aquatic organisms. Other areas of concern associated with the proposed reforestation are its reliance on land acquired via purchase of conservation easements from willing landowners. The plan also does not demonstrate that there is sufficient suitable acreage to restore to adequately offset the impacts of the pumps project.

The 2020 DSEIS also includes a conceptual proposal to install wells along the Mainline Levee inside the YBA to irrigate streams in the YBA during low-flow periods. According to the 2020 DSEIS, this effort would be designed to address declining river stages observed over the last 90 years in the Yazoo Basin due to the completion of flood control projects and agricultural practices. There are no mechanisms identified in the DSEIS to ensure that any water from the wells is not also diverted for agricultural or other purposes. There is also no data to support that use of the wells will result in the water quality or biological benefits ascribed in the 2020 DSEIS.

#### Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the FSEIS:

- Develop a compensatory mitigation plan based on specific compensation sites to determine compliance with Section 230.10(d) which addresses the following elements: compensatory mitigation project objectives, site selection factors, site protection instrument, baseline information at the impact site(s) and specific proposed compensation site(s), credit determination, work plan, maintenance plan, performance standards, monitoring requirements, long-term management plan, adaptive management plan, and financial assurances.<sup>23</sup>
- EPA recommends that the compensatory mitigation plan be appropriately sized to offset aquatic resource functional losses.
- That site-specific mitigation plans for the proposed reforestation include HGM assessments of actual mitigation sites, and that specific functional losses be identified and offset (i.e., versus being combined in the Average Annual Functional Capacity Unit calculation).

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<sup>21</sup> Some portions of the 2020 DSEIS (e.g., Appendix L) state that “no more than” 34 wells will be installed, so the actual number of proposed wells is unclear. The 2020 DSEIS also notes that there is “uncertainty associated with the availability of land for the identified well field sites from willing landowners” (Appendix L), thus detailed plans have not yet been developed.

<sup>22</sup> Mitigation standards for the regulatory program do not allow such mitigation plans to be based on hypothetical mitigation sites; this is not permitted in the CWA Section 404 Regulatory Program (40 C.F.R. § 230.91 – § 230.98).

<sup>23</sup> 40 C.F.R. § 230.94(c).



- That mitigation plans for the proposed wells include data and analysis that demonstrates the potential effectiveness of proposed mitigation in addressing water quality and biological impacts, including estimates regarding the quantity of water to be delivered to streams and the fate of water once it reaches the streams; operation and sustainability mechanisms to ensure that any water from the wells is not diverted for other purposes; and information regarding how well operation would be coordinated with the operation of the pumping station and flood gates.
- As this proposal is out-of-kind mitigation to offset a portion of the pumps project's estimated impacts to fish spawning and rearing habitat, we recommend the FSEIS demonstrate "using the watershed approach described in the rule (see § 332.3(c) [§ 230.93(c)]) that out-of-kind compensatory mitigation will better serve the aquatic resource needs of the watershed."<sup>24</sup>
- The Section 404(b)(1) Evaluation in the FSEIS should include the above referenced information as it is necessary to determine compliance with 40 C.F.R. § 230.10(d).

**2. Monitoring and Adaptive Management:** Sections 2031, 2036(a), and 2039 of WRDA 2007 require the USACE to develop a monitoring and adaptive management plan for its restoration activities<sup>25</sup> and this complements requirements in the Guidelines.<sup>26</sup> The 2020 DSEIS describes an approach to monitoring various resources in the YBA; it is unclear in the 2020 DSEIS if and how the results of this monitoring would be used to inform specific adaptive management actions.

#### Recommendation:

EPA recommends that the USACE incorporate the following information in the FSEIS:

- Consistent with current applications of adaptive management planning, we recommend that the adaptive management approach involve the collection of scientific data on various resources within the YBA, including aquatic biology, water quality, and wetlands, and the use of that information to inform ongoing management of the project. Such a monitoring and adaptive management approach would evaluate both the effects and management of the pumps, as well as the proposed well fields.
- EPA recommends the FSEIS include a detailed monitoring and adaptive management plan that is based on a clearly defined pump operation and mitigation plan. The pump operation and mitigation plan will help inform ecological metrics that should be evaluated, identify desired target values for these metrics, and present additional management actions (e.g., regarding the pumps, well fields) that should be taken based on the monitoring results.

## **II. Other Issues**

**A. Environmental Justice (EJ):** EPA recognizes the importance of flood risk reduction for vulnerable communities, and the DSEIS indicates that the YBA has a high minority and low-income population. The EJ analysis focuses on two counties, Issaquena County and Sharkey County and two cities, Hollandale and Rolling Fork. However, it is unclear why the EJ analysis was limited to the two counties. The EJ analysis (Main Report and Appendix F-1) indicates that there are lower risks of flooding associated with the Proposed Plan for these populations. According to Table 4 (Appendix F-1),

<sup>24</sup> 73 FR 19601 (Preamble to the 2008 Mitigation Rule).

<sup>25</sup> 42 U.S.C. § 1962-3; 33 U.S.C. § 2283(d); 33 U.S.C. § 2330a.

<sup>26</sup> 40 C.F.R. § 230.91 – § 230.98.



approximately 436 residential structures will no longer flood as a result of the 100-year flood event with the Proposed Plan. In addition, the analysis suggests that EJ communities are expected to benefit from reduced damages to agricultural crops. The DSEIS appears to attribute all the benefits from reduced flood loss and reduced agricultural crop loss to low-income and minority populations. This may overestimate potential benefits to EJ communities. The DSEIS also suggests that operating 34 groundwater wells will result in more subsistence fishing and hunting opportunities. However, as discussed above (see Wetlands, Fish and other Aquatic Organisms, Water Quality, and Compensatory Mitigation discussions) the extent of this is unclear. Furthermore, the FSEIS should evaluate whether there are EJ communities downstream of the pump site and, if so, whether they would be impacted by floodwater discharged from the YBA via the pumps.

Recommendation:

EPA recommends the EJ analysis clarify information regarding the scope of the study area, project benefits, and impacts in the FSEIS.

- For the study area, include a rationale for limiting the assessment to Issaquena and Sharkey Counties.
- For project benefits, clarify information regarding the magnitude and extent of the agricultural benefits to EJ communities and clarify the benefits groundwater wells will provide to subsistence fishing and hunting; and
- Discuss any potential impacts to EJ communities downstream of the pump site receiving flood water discharges.



Message

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**From:** Blevins, John [Blevins.John@epa.gov]  
**Sent:** 10/29/2020 7:32:48 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Schaedle, Candi [Schaedle.Candi@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]  
**CC:** Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Blevins, John [Blevins.John@epa.gov]  
**Subject:** YAZOO: Updated Schedule  
**Attachments:** Yazoo DEIS Schedule - revision 2.xlsx; Yazoo Review Calendar.docx

**Importance:** High

Hello All-

Please see attached an updated schedule for the Yazoo project, including a calendar style depiction for November. After further discussions within the region, we felt it made sense to try to get the final NEPA letter signed before Thanksgiving. We've reflected that in this revision, and tweaked a few other dates. Please feel free to share any concerns or suggestions with Mark or Ntale.

Thank you!

John Blevins  
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*LSASD Mission Statement: To provide sound science to our customers through superior environmental evaluation.*

*LSASD Vision Statement: To be a solutions oriented organization, and seen as a leader in sound science through innovation, responsive customer service, and cutting-edge expertise.*

*Act with Urgency Every Day!*



Message

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**From:** Mastrototaro, Jill [Jill.Mastrototaro@audubon.org]  
**Sent:** 12/1/2020 3:44:48 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Conservation Orgs Materials on Yazoo Pumps Draft SEIS  
**Attachments:** Conservation Organization Comments\_Yazoo Pumps DSEIS\_Final\_11-30-20.pdf; Fleenor\_CV.pdf

Good Morning, Mr. Forsgren and Ms. Mejias,

I wanted to share with you a package of materials that Audubon and several partners submitted into the public record yesterday regarding the Corps' October 2020 Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Backwater Pumps.

- [11/30/20 Press Release highlighting our main concerns with the DSEIS \(below\)](#)
- Technical comments submitted by Conservation Organizations to the Corps (attached); [Downloadable here with 15 supporting Appendices](#). **EPA may be particularly interested in Appendix E which presents an analysis of the Corps' HEC-RAS 1D Model**; Dr. Fleenor's CV is attached.
- [Comment letter submitted by 114 science professionals to the Corps](#)
- [Comment letter submitted by 123 national, state and local conservation, faith-based, social justice, and recreation organizations to the Corps](#)

These letters call on the Corps to abandon the destructive, ineffective, and long-vetoed Yazoo Pumps proposal and withdraw the deeply flawed DSEIS. Instead, the Corps is urged to advance Immediate-Affordable-Effective flood risk solutions that will protect local communities and restore this ecologically critical region -- including measures outlined in the proposed Resilience Alternative that accompanies the technical comments.

Notably, [over 55,000 concerned Mississippians and Americans from across the country](#) sent emails to the Corps reinforcing this crucial message.

In closing, we strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

I hope this information is helpful to you. Please do not hesitate to reach out with questions or for more details.

Kind regards,

Jill

**FOR IMMEDIATE RELEASE:** November 30, 2020

**CONTACT:**

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*Audubon Mississippi* - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)

*Healthy Gulf* - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)

*Mississippi River Network* - Kelly McGinnis, (708) 305-3524, [kmcginnis@1mississippi.org](mailto:kmcginnis@1mississippi.org)

*Mississippi Sierra Club* - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)

**55,000+ Citizens, Scientists, and Public Interest Groups Call for Effective Flood Relief Solutions for Mississippi Delta on Eve of Yazoo Pumps Deadline**



## *Corps urged to abandon wasteful, destructive Yazoo Pumps*

**JACKSON, Miss.** – Today marks the public comment deadline on the U.S. Army Corps of Engineers' (Corps) Draft Supplemental Environmental Impact Statement (EIS) for a massive drainage project in Mississippi's South Delta commonly known as the Yazoo Pumps.<sup>1</sup> The \$500 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.<sup>2</sup>

"More than 55,000 citizens, scientists, and public interest groups from Mississippi and across the country have delivered a clear and decisive message to the Corps," **said Kelly McGinnis, Executive Director of the Mississippi River Network.** "Mississippi Delta communities deserve real flood solutions, not the irresponsible, ineffective, and long-vetoed Pumps boondoggle."

This broad chorus of opposition was further demonstrated in a pair of letters sent to the Corps from over 110 science professionals and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations representing millions of members and supporters.<sup>3, 4</sup>

"The Corps' unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust," **said Andrew Whitehurst, Water Program Director for Healthy Gulf.** "The Corps is trying to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable."

Although Congress authorized the Yazoo Pumps in 1941 to theoretically provide flood control, in 2007 the Corps admitted that 80 percent of the project's benefits would be for agriculture. The Corps' Draft Supplemental EIS reinforces this finding<sup>5</sup> as well as its analysis during the 2019 Flood that 347,000 acres, or 68 percent, of the backwater area would remain flooded even with the Pumps in place.<sup>6</sup> Corps data obtained by conservation groups in November through a public records request indicate deficiencies exist with the Corps' modeling and suggest the Pumps would be even less effective than Corps' claims to-date.<sup>7</sup>

"Despite all the hype, the Corps' latest study is proof positive that the Pumps are not designed to protect communities from flooding," **said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club.** "Even at full operation the Pumps would leave, at best, 65 percent of flooded lands underwater and it would take weeks to months to drawdown floodwaters on the remaining backwater lands."

"The Corps is proposing the same project using the same problematic methodologies that were decisively rejected by EPA in 2008," **said Jill Mastrototaro, Policy Director for Audubon Mississippi.** "Not only does the draft study still find the Pumps will harm nearly 39,000 acres of wetlands, it blatantly ignores the litany of natural resource concerns raised in the veto as well as Audubon's recent analysis that the Yazoo backwater supports 29 million migrating birds annually. This study is sloppy, incomplete, and scientifically unsound."

"The Corps does not evaluate a single alternative to the vetoed Yazoo Pumps, despite repeated calls to consider flood risk reduction alternatives that could deliver immediate, affordable, and effective relief," **said Olivia Dorothy, Certified Floodplain Manager and Upper Mississippi River Basin Director for American Rivers.** "The Yazoo Pumps will not protect people from flooding or reduce flood insurance rates. Commonsense natural infrastructure and non-structural approaches are available now to help protect people's lives, property and livelihoods. These more reliable measures include elevating homes, voluntary buyouts, and paying farmers to restore cropland back to wetlands. The Corps should prioritize these smart solutions for the Yazoo Backwater Area."

Federally-funded programs that can provide flood relief alternatives to the Yazoo Pumps include the Federal Emergency Management Agency's National Flood Insurance and Flood Mitigation Assistance Grant Programs, U.S. Department of Housing and Urban Development's post-disaster programs, and U.S. Department of Agriculture's voluntary conservation programs.<sup>8</sup>



## Resources:

- 1) [Federal Register Notice publishing the Corps of Engineers' Draft Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area](#)
- 2) Adjusted for inflation. The Corps' 2007 Final EIS estimated the Yazoo Pumps would cost \$440 million dollars to construct. The Corps has not provided an updated cost estimate in the 2020 Draft Supplemental EIS.
- 3) [Comment letter submitted to the Corps by 114 science professionals](#)
- 4) [Comment letter submitted to the Corps by 123 national, state and local conservation, faith-based, social justice, and recreation organizations](#)
- 5) [Draft Supplemental EIS, Appendix G \(Engineering\), at 123, Table 2-26](#)

*Table 2-26. Proposed Plan on Total Ponding Area Reductions*

Flood Frequency	Reduction in Stage	Reduction in Area	Reduction in Volume	Days to Lower Flood to 87 Feet	Change in Water Surface per Day
1-Year	0.67	17.4%	14.2%	1.8	0.34
2-Year	1.81	39.7%	35.8%	12.9	0.25
5-Year	2.78	36.1%	45.8%	32.7	0.18
10-Year	3.17	34.7%	45.9%	48.2	0.16
25-Year	3.34	35.1%	45.4%	64.3	0.14
50-Year	3.3	34.0%	43.1%	85.4	0.12
100-Year	3.12	32.0%	40.7%	99.7	0.11

- 6) U.S. Army Corps of Engineers, Mississippi Valley Division. "Yazoo Backwater Area Inundation Map With & Without Pump" [\[Link to map\]](#). 14 March 2019. (Note: BLUE on map shows 347,000 acres of 512,000 acres that were underwater in March 2019 (i.e., 68% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place.)
- 7) American Rivers. "Yazoo Backwater Area Inundation Map With & Without Pump" [\[Link to Map\]](#). November 30, 2020. (Note: Map was created using shapefiles and data provided by the Corps in November in response to a Freedom of Information Act request from conservation groups. BLUE on map shows 422,195 acres of 509,478 acres that were underwater at the peak of the 2019 Flood (i.e., 83% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place. This result indicates discrepancies in the Corps' modeling that suggest the Pumps may be far less effective than the Corps' claims to-date.)
- 8) [Alternative Flood Relief Solutions to the Yazoo Pumps](#)

###

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American Rivers ♦ Audubon Mississippi ♦ Healthy Gulf  
National Audubon Society ♦ Sierra Club ♦ Sierra Club Mississippi

Comments on the  
Draft Supplement No. 2 To The 1982 Yazoo Area Pump Project Final  
Environmental Impact Statement (October 2020)

November 30, 2020

Submitted by Email to the Army Corps of Engineers: [yazoobackwater@usace.army.mil](mailto:yazoobackwater@usace.army.mil)  
Delivered by Email to the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service



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A	Email from Lee Forsgren to Mary Walker, Re: Yazoo Pumps Discussion (July 22, 2019) and Email from Lee Forsgren to Mary Walker, Re: Yazoo Pumps Discussion (Sept. 25, 2019)
B	Letter from Mary Walker, EPA Region 4 Administrator to Maj. Gen. R. Mark Toy, Commander U.S. Army Corps of Engineers Mississippi Valley Division, dated August 29, 2019
C	A Resilience Alternative for the Yazoo Backwater Area
D	Email from Kenneth Parrish to Margaret Strand, Re: Thank You (Jan. 29, 2020)
E	William E. Fleenor, Ph.D., Analysis of the HEC-RAS 1D Model Used by the U.S. Army Corps of Engineers in Assessment of their report: <i>"Impacts of the Yazoo Backwater Pumps to Downstream Stages 22 November 2019"</i> , November 1, 2020
F	Conservation Organizations Scoping Comments in Response to Notice of Intent to Prepare Supplemental Environmental Impact Statement for the Yazoo Area Pump Project, 85 Fed. Reg. 21218 (April 16, 2020)
G	American Rivers, et al., Conservation Organizations Strongly Support The Proposed Clean Water Act Veto for the Yazoo Backwater Pumping Plant Project; Docket No. EPA-R04-OW-20008-0179 (May 5, 2008)



H	Nutter & Associates, Inc., Technical Memorandum No. 07-059.01, Review of the USACE Yazoo River Backwater Area Reformulation Report, Prepared for National Wildlife Federation American Rivers, January 22, 2008
I	Email from Shane Lauritzen to Stuart Gillespie, Re: FOIA Yazoo Area Pump Project Draft SEIS 2 (Nov. 13, 2020)
J	Ying Ouyang, et al., <i>Estimating impact of forest land on groundwater recharge in a humid subtropical watershed of the Lower Mississippi River Alluvial Valley</i> , Journal of Hydrology: Regional Studies 26 (2019)
K	USDA, Natural Resource Conservation Service, Mississippi Delta Comprehensive Multipurpose Water Resource Plan (Oct. 21, 1998)
L	Paul Barlow and Stanley Leake, <i>Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow</i> : U.S. Geological Survey Circular 1376 (2012)
M	USGS Groundwater Watch, Field Groundwater Level Measurements for Site Numbers 334957090564301 - 011F0020 BOLIVAR & 334106090590902 - 011N0002 BOLIVAR
N	Fei Gao, <i>Simulating Potential Weekly Stream and Pond Water Available for Irrigation in the Big Sunflower River Watershed of the Mississippi Delta</i> , Water: June 2019
O	Olufemi Abimbola, <i>Influence of Watershed Characteristics on Streambed Hydraulic Conductivity Across Multiple Stream Orders</i> , Scientific Reports (2020)



American Rivers, Audubon Mississippi, Healthy Gulf, National Audubon Society, Sierra Club, and Sierra Club Mississippi (collectively, the Conservation Organizations) appreciate the opportunity to provide comments on the October 2020 Draft Supplement No. 2 To The 1982 Yazoo Area Pump Project Final Environmental Impact Statement (DSEIS).

The Conservation Organizations call on the Corps to abandon the Proposed Plan—which is prohibited by the 2008 Clean Water Act § 404(c) Final Determination and the Clean Water Act 404(b)(1) Guidelines—and withdraw the deeply flawed DSEIS. The Corps should permanently abandon all efforts to build the environmentally devastating, extremely costly, highly controversial, and long-vetoed Yazoo Pumps project and instead focus on opportunities for providing more effective, meaningful, sustainable, and immediate benefits to the communities in the Yazoo Backwater Area while restoring this ecologically critical region.

## General Comments

As demonstrated throughout these comments, the DSEIS contains serious flaws that severely underestimate and obscure the significant adverse impacts of the Proposed Plan which is clearly prohibited by the 2008 Clean Water Act § 404(c) Final Determination and the Clean Water Act 404(b)(1) Guidelines. The Conservation Organizations urge the Corps to abandon the Proposed Plan and the deeply flawed DSEIS, and instead focus on opportunities for providing more effective, meaningful, sustainable, and immediate benefits to the communities in the Yazoo Backwater Area while restoring this ecologically critical region.

In 2008, the Environmental Protection Agency (EPA) used its Clean Water Act 404(c) authority to veto the Yazoo Pumps because the project would cause “unacceptable damage” to “some of the richest wetland and aquatic resources in the nation.”<sup>1</sup> This veto was upheld by the U.S. Court of Appeals for the Fifth Circuit, ensuring that EPA’s Clean Water Act 404(c) authority would continue to provide an unequivocal defense against this egregiously damaging project.

In clear violation of EPA’s overriding veto-authority under Clean Water Act Section 404(c), the DSEIS recommends construction of the same 14,000 cubic feet per second (cfs) pumping station whose purpose, structure, operation, and impacts fall squarely within the scope of the 2008 veto—which explicitly prohibits plans that would harm more than 28,400 acres of wetlands.<sup>2</sup> Even the DSEIS, which severely underestimates wetland impacts, acknowledges that the Proposed Plan will degrade more than 38,744 acres of wetlands<sup>3</sup>; a level of impacts that is unquestionably prohibited by the veto and the Clean Water Act 404(b)(1) Guidelines.

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<sup>1</sup> The Environmental Protection Agency’s 2008 Clean Water Act 404(c) Final Determination garnered overwhelming support, including from: the U.S. Fish and Wildlife Service; more than 120 conservation organizations; 540 independent scientists; the Society of Wetland Scientists; the Association of State Wetland Managers; a former EPA Administrator; four former EPA Assistant Administrators for Water; a former Deputy Assistant Secretary of the Army for Civil Works; and 99.9% of the 48,000 comments submitted during the veto process, including 90% of comments submitted by Mississippi residents.

<sup>2</sup> The Clean Water Act 404(c) Final Determination covers impacts ranging from 28,400 to more than 67,000 acres of wetlands. Clean Water Act 404(c) Final Determination at iii, 73. The severely—and improperly—restricted wetland assessment in the DSEIS acknowledges a minimum of 38,744 acres of wetland impacts.

<sup>3</sup> Draft Supplement No. 2 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (October 2020) (DSEIS), Appendix F-5 (Wetlands) at 33.



The Yazoo Pumps could also create significant flood risks for communities in north Vicksburg and the Yazoo Backwater Area—concerns raised by both the conservation community and EPA during the June 2020 scoping period. The DSEIS disregards these concerns in a high-handed and conclusory manner by citing a model<sup>4</sup> that is too flawed to provide any type of reliable analysis, as discussed in detail below. Operation of the Yazoo Pumps would put downstream communities on the receiving end of an additional 9 billion gallons of water per day when the Yazoo River is already at flood stage. Communities in the Yazoo Backwater Area would be at risk if that massive influx of water overtopped or damaged the Yazoo Backwater Levee, which is at risk of crevassing and is so low that it is not accredited to handle a 100-year flood.<sup>5</sup> Collapse of this levee would cause catastrophic flooding for the very communities the Yazoo Pumps are purported to protect.

Notably, the DSEIS acknowledges that the unquestionably vetoed Yazoo Pumps would not prevent flooding. To the contrary, operation of the Pumps would leave 82% to 89% of flooded lands underwater and take weeks to months to drawdown floodwaters on the remaining lands.<sup>6</sup>

The DSEIS fails to consider even a single alternative to the vetoed Yazoo Pumps, in direct violation of the National Environmental Policy Act, the Clean Water Act, and modern approaches to floodplain management. The DSEIS makes no mention of repeated requests to consider alternatives, including from EPA and conservation organizations whose June 2020 scoping comments proposed a detailed proposal for a suite of proven, low-cost, natural infrastructure and non-structural measures that would provide immediate, effective, sustainable, and environmentally sound relief to communities in the Yazoo Backwater Area.

As discussed in detail below, the DSEIS suffers from many additional fundamental flaws. For example, the DSEIS ignores a wide array of devastating impacts to hemispherically significant wetlands. The DSEIS ignores critical impacts to the many rivers and streams in the project area. The DSEIS dramatically understates adverse impacts to the region's rich array of fish and wildlife, including to species listed under the Endangered Species Act. The DSEIS' conceptual mitigation plan does not come close to satisfying the Corps' obligations to fully mitigate the project's devastating impacts and it violates longstanding legal requirements. The DSEIS does not provide an estimate of the Proposed Plan's costs or benefits. And the DSEIS has not undergone the independent external peer review that is required for this project as a matter of law.

Critically, despite explicitly stating that it will address the concerns raised in the 2008 veto,<sup>7</sup> the DSEIS does no such thing. Instead it relies on the very same flawed approaches that were decisively rejected by EPA in the veto because they severely underestimate and obscure the significant and unacceptable impacts of the pumps.

The Yazoo Pumps would damage up to 200,000 acres of ecologically rich wetlands that provide hemispherically significant habitat in the heart of the Mississippi River flyway. These wetlands support

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<sup>4</sup> DSEIS, Appendix G (Engineering) at 144-145, paragraph 177.

<sup>5</sup> National Levee Database at <https://levees.sec.usace.army.mil/#/levees/system/5905000041/fema> (accessed November 6, 2020). Lack of accreditation means that the Yazoo Backwater Levee cannot protect Yazoo Backwater communities during flood events at or greater than the 1% chance of exceedance (100-year flood event).

<sup>6</sup> DSEIS, Appendix C (Tables), Table 5.3. The "sloped pool" model is more accurate than the more optimistic "flat pool" model.

<sup>7</sup> DSEIS at 18.



more than 450 species of birds, fish and wildlife, including migrating species like geese, ducks, pallid sturgeon, monarch butterflies, and American eels. Many thousands of these acres of wetlands are located in National Forest and National Wildlife Refuge lands, state-owned conservation lands, lands enrolled in federal conservation programs, and lands purchased and restored as mitigation for previously constructed federal water projects—lands that taxpayer dollars have long paid to protect and manage as wetland systems for people and wildlife.

The Lower Mississippi Alluvial Valley has already lost 80 percent of its original wetlands. The majority of those losses have been traced directly to the effects of federal flood control and drainage projects.<sup>8</sup> From just the 1970s to 2006, the Yazoo Backwater Area lost 11 percent of its remaining forested wetlands.<sup>9</sup> The loss of many tens of thousands of additional acres of wetlands from the Yazoo Pumps would have catastrophic implications for the ecology of the region and for the fish and wildlife that rely on those resources.

## Detailed Comments

### A. The Proposed Plan is Prohibited by the 2008 Clean Water Act 404(c) Final Determination

In 2008, the Environmental Protection Agency (EPA) used its Clean Water Act 404(c) authority to veto construction and operation of the Yazoo Pumps because they would cause “unacceptable damage” to “some of the richest wetland and aquatic resources in the nation.”<sup>10</sup> This veto was upheld by the U.S. Court of Appeals for the Fifth Circuit, ensuring that EPA’s Clean Water Act 404(c) authority would continue to provide a critical last line of defense against this egregiously damaging project.

Despite this long-standing prohibition against construction and operation of the Yazoo Pumps—and in clear violation of EPA’s overriding Clean Water Act veto authority—the DSEIS recommends the same 14,000 cfs pumping station whose purpose, structure, operation, and impacts fall squarely within the scope of the 2008 veto.<sup>11</sup> In fact, the DSEIS explicitly states that the DSEIS Proposed Plan is the vetoed plan: “The proposed plan is Plan 5 from the 2007 FEIS.”<sup>12</sup>

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<sup>8</sup> Department of the Interior, *The Impact of Federal Programs on Wetlands, Volume I: The Lower Mississippi Alluvial Plain and the Prairie Pothole Region, A Report to Congress by the Secretary of the Interior*, October 1988 at 60.

<sup>9</sup> Dahl, T.E., J. Swords and M. T. Bergeson. 2009. *Wetland inventory of the Yazoo Backwater Area, Mississippi - Wetland status and potential changes based on an updated inventory using remotely sensed imagery*. U.S. Fish and Wildlife Service, Division of Habitat and Resource Conservation, Washington, D.C. 30 p. (available at <https://www.fws.gov/wetlands/documents/Wetland-Inventory-of-the-Yazoo-Backwater-Area-Mississippi.pdf>).

<sup>10</sup> The Environmental Protection Agency’s Clean Water Act 404(c) Final Determination garnered overwhelming support, including from: the U.S. Fish and Wildlife Service; more than 120 conservation organizations; 540 independent scientists; the Society of Wetland Scientists; the Association of State Wetland Managers; a former EPA Administrator; four former EPA Assistant Administrators for Water; a former Deputy Assistant Secretary of the Army for Civil Works; and 99.9% of the 48,000 comments submitted during the veto process, including 90% of comments submitted by Mississippi residents.

<sup>11</sup> The Clean Water Act 404(c) Final Determination covers impacts ranging from 28,400 to more than 67,000 acres of wetlands. The severely—and improperly—restricted wetland assessment in the DSEIS acknowledges at least 38,744 acres of wetland impacts, as discussed in detail in Section F.1 of these comments.

<sup>12</sup> DSEIS, Appendix G (Engineering) at 123.



The 2008 veto conclusively prohibits both construction and operation of the Yazoo Pumps, as repeatedly stated in the veto. For example:

The construction and operation of the proposed pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated. After extensive evaluation of the record for this project, EPA has determined that these large-scale hydrologic alterations would significantly degrade the critical ecological functions provided by approximately 67,000 acres of wetlands in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources.<sup>13</sup>

\* \* \*

EPA's Final Determination concludes that the discharge of dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Pumps Project (i.e., Plan 5 from the FSEIS), as well as the two alternative proposals offered by the Corps in February 2008 (i.e., Plan 6 from the FSEIS and Modified Plan 6) and subsequent operation of the 14,000 cfs pumping station would result in unacceptable adverse effects on fishery areas and wildlife. The administrative record developed in this case fully supports the conclusion that, as a result of alterations to the spatial extent, depth, frequency, and duration of inundation of wetlands within the project area, the proposed projects would significantly degrade the critical ecological functions provided by approximately 28,400 to 67,000 acres of wetlands (i.e., the range of wetland impacts as a result of Plan 5, Plan 6, and Modified Plan 6) in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources. Although not proposed to go forward, FSEIS Plans 3, 4, and 7, which also include a 14,000 cfs pumping station are expected to result in wetland impacts between approximately 28,400 and 118,400 acres (see FSEIS Main Report, Table 17, page 1-20). EPA has determined that each of these alternatives would also result in unacceptable adverse effects on fishery areas and wildlife. EPA does not believe that these adverse impacts can be adequately compensated for by the proposed mitigation, and are inconsistent with the requirements of the CWA. Further, these impacts should be viewed in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.<sup>14</sup>

In fact, the adverse impacts resulting from operation of the Yazoo Pumps are the fundamental reason for the veto, as clearly stated by EPA:

The adverse effects associated with the prohibited projects are the result of a combination of operational factors including the capacity of the pumping station and its associated pump-on elevations.<sup>15</sup>

It is equally clear that small modification to the location of the Yazoo Pumps in the Proposed Plan does not exempt the Proposed Plan from the veto, for at least the following reasons:

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<sup>13</sup> Clean Water Act 404(c) Final Determination at i (emphasis added).

<sup>14</sup> Clean Water Act 404(c) Final Determination at iii (emphasis added).

<sup>15</sup> Clean Water Act 404(c) Final Determination at 73 (emphasis added).



- (1) As an initial matter, the Proposed Plan will dredge and fill some of the exact same wetlands as the 2007 plan, which is explicitly prohibited by the veto. The Proposed Plan uses the same borrow area near the Steele Bayou location that would have been used to construct the 2007 plan, as acknowledged in the DSEIS: “The borrow area identified for the previous design will be used for the new design.”<sup>16</sup> This borrow area is “north of and adjacent to the Steele Bayou structure” and “was identified to provide fill material for the previous design.”<sup>17</sup> This borrow area contains 23 acres of wetlands that will be directly impacted by dredging and filling.<sup>18</sup> Indeed, reliance on the same borrow area means that the Proposed Plan in fact does not locate the Yazoo Pumps in an entirely new location.
- (2) The Proposed Plan places the Yazoo Pumps and the extensive related construction squarely within the same project area as the 2007 plan. This is true under each of the various definitions of the project area.<sup>19</sup>
- (3) The DSEIS explicitly states that the Proposed Plan is the same as the 2007 plan. As noted in the Engineering Appendix: “The proposed plan is Plan 5 from the 2007 FEIS.”<sup>20</sup>
- (4) The Proposed Plan has the same objective as the 2007 plan. As recognized in the veto, the “basic objective of the [2007] proposed project is to limit the spatial extent, frequency, and length of time the Yazoo Backwater Area floods.”<sup>21</sup> The DSEIS confirms that this is also the basic objective of the Proposed Plan: “The Proposed Plan would provide for the reduction in interior flooding during backwater flood events. When activated, the pumps will lower the water surface of floods greater than the 1-year frequency flood, which will reduce the extent and duration of the flood.”<sup>22</sup>
- (5) The Proposed Plan includes the same 14,000 cfs pumping plant as the 2007 plan.<sup>23</sup>
- (6) The Proposed Plan utilizes the same operating plan as the 2007 plan. Both have a year-round pump elevation of 87.0 feet, NGVD.<sup>24</sup>

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<sup>16</sup> DSEIS, Appendix G (Engineering) at 160.

<sup>17</sup> DSEIS, Appendix G (Engineering) at 160.

<sup>18</sup> DSEIS at 73 and Appendix F-5 (Wetlands) at 72.

<sup>19</sup> The 2007 FSEIS defines the “Yazoo Backwater Project Area” as “bounded on the west by the left descending bank of the mainline Mississippi River levee, on the east by the west bank levees of the Will M. Whittington Auxiliary channel and the connecting channel, and the Yazoo River on the south (926,000 acres).” 2007 FSEIS at SEIS-1. The 2007 FSEIS defines the “Yazoo Backwater Study Area” as the area “which encompasses those lands within the 100-year flood frequency, approximately 630,000 acres.” 2007 FSEIS at SEIS-1. The 2008 Clean Water Act 404(c) Final Determination refers to both these areas. The DSEIS defines the Yazoo Study Area as “located in west-central Mississippi immediately north of Vicksburg, Mississippi, and has historically been subject to flooding from backwater by the Mississippi River and headwater flooding from the Yazoo River, Sunflower River, and Steele Bayou. The triangular shaped study area extends northward about 65 miles to the latitude of Hollandale and Belzoni, Mississippi, and comprises about 1,446 square miles. Big Sunflower and Little Sunflower rivers, Deer Creek, and Steele Bayou flow through the study area.” DSEIS at 9.

<sup>20</sup> DSEIS, Appendix G (Engineering) at 123.

<sup>21</sup> Clean Water Act 404(c) Final Determination at 47.

<sup>22</sup> DSEIS at 15.

<sup>23</sup> Clean Water Act 404(c) Final Determination at i; DSEIS at 6.

<sup>24</sup> DSEIS at 20; Clean Water Act 404(c) Final Determination at 6.



- (7) The Proposed Plan pumps water from the same project area—the Yazoo Backwater Area—and the into the same river—the Yazoo River—as the 2007 plan.<sup>25</sup>
- (8) Most critically, construction and operation of the Proposed Plan causes highly significant adverse impacts to hemispherically significant wetlands that are explicitly covered by the veto. As discussed throughout these comments, the DSEIS improperly restricts its assessment of adverse impacts, leading to a severe underestimate of the impacts of the Proposed Plan. However, even this severe underestimate acknowledges that the Proposed Plan will degrade at least 38,774 acres of wetlands in the 2-year floodplain; a level of harm that is explicitly prohibited by the veto because it would cause significant, unacceptable degradation of wetlands and other aquatic resources. The EPA veto prohibits “large-scale hydrologic alterations [that] would significantly degrade the critical ecological functions provided by at least 28,400 to 67,000 acres of wetlands in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources.”<sup>26</sup>

The veto also states that “derivatives of the prohibited projects that involve only small modifications to the operational features or location of these proposals would also likely result in unacceptable adverse effects and would generate a similar level of concern and review by EPA.”<sup>27</sup> Because EPA rejected the notion that a slight change in location would alter the veto decision, any suggestion that the proposed new location exempts the Proposed Plan from the veto is nothing more than a red herring.<sup>28</sup>

Moreover, in addition to explicitly stating that the Proposed Plan is the same as the 2007 plan (Plan 5),<sup>29</sup> the Corps continues to rely on analyses carried out for the 2007 plan. For example, the DSEIS does not provide any type of new analysis of alternatives, project benefits, or project costs. The DSEIS also presumably assumes that the non-federal sponsor cost-share waiver that applies to the 2007 plan also applies to the Proposed Plan.<sup>30</sup> Notably, the Corps provides no meaningful justification for the decision to slightly change the location of the Pumps, strongly suggesting that the change in location is nothing more than a transparent attempt to evade the veto.

In fact, the Proposed Plan plainly violates the 404(b)(1) Guidelines because it would cause even greater impacts than the 2007 plan. As discussed throughout these comments, moving the location of the Pumps causes additional adverse impacts that demonstrate that the Proposed Plan is not the least environmentally damaging practicable alternative, and thus is prohibited under the Clean Water Act 404(b)(1) Guidelines, as fully discussed in Section B of these comments. Moreover, the DSEIS provides no evidence to suggest that the significant adverse impacts that result from operating the Yazoo Pumps are less at the Deer Creek location than they would have been at the Steele Bayou location.

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<sup>25</sup> Clean Water Act 404(c) Final Determination at i.

<sup>26</sup> Clean Water Act 404(c) Final Determination at 72.

<sup>27</sup> Clean Water Act 404(c) Final Determination at 73 (internal footnotes omitted) (emphasis added).

<sup>28</sup> See *Am. Methyl Corp. v. E.P.A.*, 749 F.2d 826, 838 (D.C. Cir. 1984) (purported reason for revocation of a decision was “at best an ancillary matter, unlikely to influence EPA’s final decision.”).

<sup>29</sup> DSEIS, Appendix G (Engineering) at 123.

<sup>30</sup> The Conservation Organizations strongly disagree with the Corps’ contention that it need not carry out these required analyses for the Proposed Plan, and the Corps’ implicit contention that the non-federal cost share waiver continues to apply to the Proposed Plan, as documented throughout these comments.



These facts underscore the perverse outcome created by the Corps' attempt to circumvent the veto. EPA prohibited the construction and operation of the Yazoo Pumps due to their unacceptable impacts and simultaneously encouraged the Corps to consider alternative, environmentally protective flood damage reduction measures. The DSEIS, however, does not consider any alternatives and instead fixates solely on an even-more-damaging pumps project that will cause unacceptable adverse impacts to the environment. This outcome is irreconcilable with the veto's plain language and would turn the veto on its head.

Allowing the Corps to evade the long-standing and extensively documented veto by slightly moving the location of the Pumps would insert a glaring loophole into Clean Water Act section 404(c). This loophole would allow federal agencies and non-federal permittees to unilaterally circumvent a Clean Water Act veto simply by slightly moving a project. This would effectively render the vitally important Clean Water Act § 404(c) an empty letter. Such a reading of the statute would eviscerate EPA's express statutory right to prohibit specification of disposal sites, and thereby render subsection 404(c) superfluous—a result to be avoided.<sup>31</sup>

The Corps is plainly aware that it cannot unilaterally circumvent the veto.<sup>32</sup> In fact, EPA expressly advised the Corps that it must make a formal request to EPA to modify or withdraw the 2008 veto before EPA would consider doing so.<sup>33</sup> Furthermore, EPA would have a duty to comply with the critical elements of the Section 404(c) process in assessing whether (or not) to modify the veto.<sup>34</sup> Accordingly, EPA advised the Corps that any such request would require comprehensive supporting documentation,<sup>35</sup> and that EPA would then ensure a hearing and opportunity for the public to provide written comments on any recommended modification.<sup>36</sup> EPA can only modify the veto based on a final determination that documents findings that the proposed modification would not result in unacceptable adverse impacts.

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<sup>31</sup> See *Corley v. United States*, 556 U.S. 303, 314 (2009) (applying “one of the most basic interpretative canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant”) (brackets and quotation marks omitted); *Mingo Logan Coal Co. v. U.S. E.P.A.*, 714 F.3d 608, 613–14 (D.C. Cir. 2013).

<sup>32</sup> See Email from Lee Forsgren to Mary Walker, Re: Yazoo Pumps Discussion (July 22, 2019); see also Email from Lee Forsgren to Mary Walker, Re: Yazoo Pumps Discussion (Sept. 25, 2019). A copy of these email chains is provided as Attachment A to these comments; see 44 Fed. Reg. 58,076, 58,082 (Oct. 9, 1979) (“The Corps of Engineers cannot override a section 404(c) veto by the Administrator.”).

<sup>33</sup> Letter from Mary Walker, EPA Region 4 Administrator to Maj. Gen. R. Mark Toy, Commander U.S. Army Corps of Engineers Mississippi Valley Division, dated August 29, 2019. A copy of this letter is provided at Attachment B to these comments.

<sup>34</sup> EPA has never withdrawn a veto. In the few narrow circumstances where EPA has modified a veto, “the key elements of a Section 404(c) process were followed,” including public comment on a recommended determination and a final determination that the modification would not result in unacceptable adverse impacts. See, e.g., *Modification of the 1985 Clean Water Act Section 404(c) Final Determination for Bayou aux Carpes in Jefferson Parish, LA*, 74 Fed. Reg. 37,219 (July 28, 2009).

<sup>35</sup> EPA must make an independent assessment of evidence and not blindly defer to Corps—the very agency it is supposed to be policing. See 33 U.S.C. § 1344(c); see also *Mingo Logan Coal Co. Inc. v. U.S. Env'tl. Prot. Agency*, 70 F. Supp. 3d 151, 181 (D.D.C. 2014) (Section 404 “designates EPA as the ultimate decisionmaker with respect to the enumerated types of environmental consequences of section 404 discharges.”).

<sup>36</sup> See 33 U.S.C. § 1344(c) (requiring notice and comment “whenever” the Administrator determines that a discharge will cause unacceptable adverse impacts); see also *Consumer Energy Council of Am. v. Fed. Energy Regulatory Comm'n*, 673 F.2d 425, 446 (D.C. Cir. 1982) (“The value of notice and comment prior to repeal of a final rule is that it ensures that an agency will not undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal.”).



## B. The Proposed Plan is Prohibited by the Clean Water Act 404(b)(1) Guidelines

In addition to being prohibited by the Clean Water Act 404(c) veto, the Proposed Plan is prohibited by the Clean Water Act 404(b)(1) Guidelines, which strictly prohibit a “discharge into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/ or probable impacts of other activities affecting the ecosystem of concern.”<sup>37</sup> The “degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by the[] Guidelines.”<sup>38</sup> These Guidelines are binding and are explicitly applicability to water resources projects planned or constructed by the Corps.<sup>39</sup>

The DSEIS fundamentally fails to demonstrate that the Proposed Plan can be carried out without violating the 404(b)(1) Guidelines. First, the DSEIS fails to demonstrate that the Proposed Plan is the least environmentally damaging practicable alternative, a threshold error that renders the analysis arbitrary and capricious. Second, despite severely understating the adverse impacts of the Proposed Plan, the impacts acknowledged in the DSEIS will clearly cause significant—and conclusively unacceptable, as documented in the EPA veto—degradation of the aquatic ecosystem. Third, the DSEIS fails to demonstrate that those adverse impacts will be mitigated because it relies on a wholly conceptual mitigation proposal that is both woefully inadequate and infected by the very same fatal flaws identified by EPA in the veto. Fourth, the DSEIS fails to demonstrate that the Proposed Plan will not cause or contribute to violations of state water quality standards. Fifth, the DSEIS fails to demonstrate that the Proposed Plan will not jeopardize or adversely affect formally designated critical habitat.

### 1. The DSEIS Does Not—and Cannot—Demonstrate that the Proposed Plan Is the Least Environmentally Damaging Practicable Alternatives

The Corps has not satisfied its obligation to demonstrate that the Proposed Plan is the least environmentally damaging practicable alternative (LEDPA). The DSEIS disregards practicable, less-damaging alternatives proposed by EPA and the public, including a highly practicable Resilience Alternative. Instead, the DSEIS focuses solely on the already-vetoed Proposed Plan, which would cause far greater impacts to the environment and is undoubtedly not the LEDPA. In fact, the DSEIS demonstrates that the Proposed Plan is unquestionably not the LEDPA. This backwards analysis is arbitrary, capricious, and contrary to the binding 404(b)(1) Guidelines.

The Clean Water Act prohibits the Corps from dredging and filling wetlands if there is a less-environmentally damaging practicable alternative.<sup>40</sup> If such an alternative exists, “the CWA compels that the alternative be considered and selected unless proven impracticable.”<sup>41</sup> Here, EPA and the Conservation Organizations identified less-environmentally damaging practicable alternatives to the Proposed Plan, including the Resilience Alternative submitted to the Corps with the Conservation

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<sup>37</sup> 40 C.F.R. § 230.1(c) (emphasis added).

<sup>38</sup> 40 C.F.R. § 230.10(d).

<sup>39</sup> 33 CFR § 336.1(a); *See All. to Save the Mattaponi v. U.S. Army Corps of Engineers*, 606 F. Supp. 2d 121, 124 (D.D.C. 2009) (Stating that “the Corps must follow binding guidelines established by the Corps and the EPA (the “Guidelines” or the “404(b) Guidelines”), which are codified at 40 C.F.R. Part 230.”).

<sup>40</sup> *See* 40 C.F.R. § 230.10(a).

<sup>41</sup> *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1189 (10th Cir. 2002).



Organization scoping comments, which are provided at Attachments C and F to these comments. Yet, the Corps flatly refused to consider any alternatives in the DSEIS, a clear failing that violates the CWA.

EPA has repeatedly urged the Corps to consider non-structural solutions to reduce flood damages while protecting the critical wetland resources in the Yazoo Backwater Area,<sup>42</sup> and the EPA veto encouraged the Corps to “evaluate alternative flood protection measures that are consistent with this Final Determination.”<sup>43</sup> That Determination prohibits multiple formulations of the Yazoo Pumps because the project would cause “unacceptable adverse effects on fishery areas and wildlife”<sup>44</sup> and “unacceptable damage” to “some of the richest wetland and aquatic resources in the nation.”<sup>45</sup> To that end, the veto urged the Corps to “conduct a comprehensive evaluation of the flood management needs in the region and the full range of options to effectively address those needs.”<sup>46</sup>

EPA presented a detailed “non-structural reforestation alternative which would meet project objectives”<sup>47</sup> in its November 3, 2000 comments on the draft supplemental environmental impact statement for the 2007 Yazoo Pumps proposal. EPA restated its recommendation for the use of a non-structural reforestation alternative in its January 22, 2008 comments on the 2007 Yazoo Pumps final supplemental impact statement.<sup>48</sup> In the Recommended Veto, EPA proposed a less-environmentally damaging practicable alternative that would incorporate a suite of non-structural measures, including “reforestation of farmlands in the floodplain, relocation or flood proofing of flood-prone structures, conservation easements, localized flood protection structures including elevated transportation corridors, and expansion of insurance programs to compensate for economic losses from flooding.”<sup>49</sup> EPA reiterated the need to consider non-structural protection during the scoping period for this DSEIS, highlighting “the significant advancements in nonstructural approaches to flood damage reduction.”<sup>50</sup>

During the scoping period on the DSEIS, the Conservation Organizations also urged the Corps to evaluate a detailed Resilience Alternative that satisfies all three criteria of a less environmentally damaging practicable alternative.<sup>51</sup> First, the Resilience Alternative is practicable because it relies on available, fully-funded solutions that achieve the project purpose as stated by the Corps, which is “to provide reduced flood damages from the Mississippi and Yazoo Rivers to areas in the lower Mississippi Delta.”<sup>52</sup>

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<sup>42</sup> Clean Water Act 404(c) Final Determination, Appx. 1 at 9. The U.S. Fish and Wildlife Service has also repeatedly recommended use of nonstructural and restoration approaches in lieu of the Yazoo Pumps. E.g., U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 11.

<sup>43</sup> Clean Water Act 404(c) Final Determination at 70 (emphasis added).

<sup>44</sup> Clean Water Act 404(c) Final Determination at 70.

<sup>45</sup> Clean Water Act 404(c) Final Determination at 5, 73.

<sup>46</sup> Clean Water Act 404(c) Final Determination at 71.

<sup>47</sup> Environmental Protection Agency, Region 4, Comments on the Yazoo Backwater Area Draft Reformulation Report (DRR) and Draft Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (DSEIS), Mississippi and Alabama; CEQ #000317 (November 3, 2000).

<sup>48</sup> Environmental Protection Agency, Region 4, Comments on the U.S. Army Corps of Engineer's (Corps) Final Yazoo Backwater Area Reformulation Report (FRR) and Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement; Washington, Humphries, Sharkey, Issaquena, Warren and Yazoo Counties, MS and Madison Parish, LA; CEQ# 20070486; ERP# COE-E36074-00 (January 22, 2008).

<sup>49</sup> EPA Recommended Veto at 60.

<sup>50</sup> EPA Scoping Letter (June 15, 2020), at 3.

<sup>51</sup> Pursuant to 40 C.F.R. § 230.10(a), “no discharge of dredged or fill material shall be permitted if there is a [1] practicable alternative to the proposed discharge [2] which would have less adverse impact on the aquatic ecosystem, [3] so long as the alternative does not have other significant adverse environmental consequences.”

<sup>52</sup> 2007 SEIS at 8; See 40 C.F.R. § 230.10(a)(2) (“An alternative is practicable if it is available and capable of being



This Resilience Alternative includes a combination of solutions employed by communities across the country to reduce flood risks, including purchasing wetland reserve and floodplain easements, voluntary buyouts and relocations, and flood-proofing infrastructure (including elevating homes, buildings and roads).<sup>53</sup> Second, the Resilience Alternative avoids the unacceptable adverse impacts of the Proposed Plan on wetlands and other aquatic resources.<sup>54</sup> Third, the Resilience Alternative avoids all other significant environmental impacts associated with the construction and operation of the Proposed Plan.<sup>55</sup> Accordingly, the Corps had an obligation to thoroughly consider and select this proposed Resilience Alternative.

The Corps, however, refused to undertake any analysis of alternatives in the DSEIS, as discussed in Section E of these comments. The Corps also refused to consider any alternatives in its draft 404(b)(1) Analysis. As a result, the Corps has failed to demonstrate that the Proposed Plan is the least environmentally damaging practicable alternative—a failure that plainly violates the 404(b)(1) Guidelines.<sup>56</sup>

To the contrary, the DSEIS demonstrates that the Proposed Plan will cause far more impacts than the 2007 plan, and thus by definition, cannot, qualify as the LEDPA. Under the Proposed Plan, the Corps would construct the pumps at Deer Creek, which would destroy 84 acres of wetlands.<sup>57</sup> These direct impacts far exceed the Corps' 2007 plan, which would have directly impacted 38 acres of wetlands at the Steele Bayou Flood Control Structure.<sup>58</sup> Furthermore, the proposed plan eliminates 52,900 acres of restoration that was a much-touted component of the 2007 proposal, thereby exacerbating the adverse impacts to aquatic ecosystems.<sup>59</sup> Finally, the Proposed Plan also eliminates changes to the operation of the Steele Bayou Flood Control Structure that would allow water levels to rise naturally in the Yazoo Backwater Area by an additional three feet, abolishing the benefits that would have been created by this component of the 2007 plan.<sup>60</sup> As a result of this change to the operation of Steele Bayou, the Proposed Plan would increase "adverse effects to wetland function by 67.7 percent, aquatic spawning value by 79.7 percent, aquatic rearing value by 67.4 percent, and waterfowl foraging value by 100.0 percent," as compared to the higher water level elevations proposed in the 2007 plan.<sup>61</sup> Given these facts, there is

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done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.").

<sup>53</sup> See Section E of these comments and the related Attachment that includes the Resilience Alternative

<sup>54</sup> The 404(b)(1) Guidelines reinforce this point by creating a rebuttable presumption that that the Resilience Alternative, because it avoids impacts to wetlands, has "less adverse impacts on the aquatic ecosystem, unless clearly demonstrated otherwise." 40 C.F.R. § 230.10(a)(3).

<sup>55</sup> 40 C.F.R. § 230.10(a)(2).

<sup>56</sup> See *All. to Save the Mattaponi*, 606 F. Supp. 2d at 130 ("The Corps must adequately explain why there is no less-damaging practicable alternative. If the Corps cannot so explain based on the record before it, it must reconsider its determination based on an adequate analysis of the alternatives.")

<sup>57</sup> DEIS Appx. F-5 (wetlands) at 31; see also *id.* at Table 48 (identifying a loss of 444 AAFCUs).

<sup>58</sup> See 2007 SEIS at Appx. 10 at 2-3; *id.* at Table 10-20 (identifying a loss of 240 AAFCUs due to physical construction at Steele Bayou). This point is particularly clear given that the Corps has already destroyed wetlands at the Steele Bayou site to construct the intake and outlet channels. The Corps now proposes to construct another set of inlet and outlet channels, destroying far more wetlands and further wasting tax-payer money.

<sup>59</sup> DEIS 2 at 19-20.

<sup>60</sup> *Id.* at 22.

<sup>61</sup> The 2007 Plan would modify the operation of the Steele Bayou water control structure to maintain water elevations between 70.0 and 73.0 feet (NGVD) during low water periods. DSEIS at 22. According to the Corps, these higher ponding levels would have "reduced adverse effects to wetland function by 67.7 percent, aquatic spawning value by 79.7 percent, aquatic rearing value by 67.4 percent, and waterfowl foraging value by 100.0 percent." 2007 Appx. I (Mitigation) at 23; 2007 Appx. 11 (Aquatics) at 16-17. The Corps inexplicably eliminated



no plausible way that the Proposed Plan, which significantly increases impacts to the environment, constitutes the LEDPA.

**2. The DSEIS Does Not—and Cannot—Demonstrate that the Proposed Plan Will Not Cause or Contribute to Significant Degradation of Waters of the United States.**

The 404(b)(1) Guidelines strictly prohibit the discharge of dredge or fill material that “will cause or contribute to significant degradation of the waters of the United States.”<sup>62</sup> As demonstrated in Section A of these comments, the Proposed Plan is clearly prohibited by the EPA veto, which concluded that the Yazoo Pumps would cause significant—and demonstrably unacceptable—degradation of some of the richest wetland and aquatic resources in the Nation. That finding decisively forecloses construction of the Proposed Plan.<sup>63</sup>

In a blatant attempt to evade the veto’s clear prohibition on constructing the Yazoo Pumps, the DSEIS repeats the very same errors rejected by EPA in an arbitrary attempt to dramatically understate and obscure the Proposed Plan’s unquestionably significant and unacceptable degradation of the aquatic environment. However, even the severely and improperly restricted analysis in the DSEIS acknowledges that the Proposed Plan will degrade at least 38,774 acres of wetlands in the 2-year floodplain; a level of harm that is explicitly prohibited by the veto because it would cause significant, unacceptable degradation of wetlands and other aquatic resources.

**(i) The DSEIS Acknowledges that the Proposed Plan Will Cause Significant Degradation to the Nation’s Waters**

As documented in the veto, the Yazoo Backwater Area contains some of the richest wetland and aquatic resources in the Nation, which support a highly productive floodplain fishery, migratory bird foraging grounds of hemispheric significance, and some of the largest remaining bottomland hardwood forests.<sup>64</sup> The EPA veto explicitly prohibits construction of multiple formulations of the Yazoo Pumps that would damage 28,400 or more acres of wetlands.<sup>65</sup> Indeed, the veto determined that the significant degradation to more than 28,400 acres of nationally significant wetland and aquatic resources was so unacceptable that it was essential to use Clean Water Act 404(c) for just the 12<sup>th</sup> time in the history of the Clean Water Act to veto construction of the Yazoo Pumps.

The DSEIS shows that the Proposed Plan will degrade wetland functions on a minimum of 38,774 acres of wetlands,<sup>66</sup> which constitutes significant degradation as determined by EPA in the veto. As a result, the Proposed Plan would cause a degree of adverse impacts that falls squarely within the scope of the veto, rendering it clearly prohibited by the Clean Water Act 404(b)(1) Guidelines.

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that benefit in the proposed plan, exacerbating the impacts to wetlands, aquatic resources, and wildlife.

<sup>62</sup> 40 C.F.R. § 230.10(c).

<sup>63</sup> *Sierra Club v. U.S. Army Corps of Eng’rs*, 772 F.2d 1043, 1051 (2d Cir. 1985) (“[W]hen an agency approves a project that the record before a reviewing court reveals will have a significant adverse impact on marine wildlife, the agency determination must be reversed.”).

<sup>64</sup> Clean Water Act 404(c) Final Determination at 72.

<sup>65</sup> The Clean Water Act 404(c) Final Determination covers impacts ranging from 28,400 to more than 67,000 acres of wetlands. Clean Water Act 404(c) Final Determination at iii, 45, 72, 73. The severely—and improperly—restricted wetland assessment in the DSEIS acknowledges a minimum of 38,744 acres of wetland impacts.

<sup>66</sup> DSEIS F-5 (Wetlands) at Table 69.



(ii) The DSEIS Dramatically Understates the Full Extent of the Proposed Plan's Significant Degradation to the Nation's Waters

The DSEIS significantly understates the full extent of the Proposed Plan's significant degradation to the Nation's waters because the DSEIS fails to analyze a vast array of impacts to hemispherically significant wetlands and other aquatic resources, as summarized below and detailed throughout these comments.

First, the DSEIS arbitrarily and dramatically constrains its analysis of wetland impacts, as detailed in Section F of these comments. The DSEIS looks only at impacts to the small subset of wetlands located within the 2-year floodplain that receive  $\geq 14$  consecutive days of flooding—an approach explicitly rejected by EPA. The DSEIS further limits this assessment by looking only at changes to the duration of inundation on that small subset of wetlands.

The DSEIS' refusal to consider any factors other than the duration of inundation to determine what wetlands it needs to consider, is in direct violation of the multi-factor approach required by the 404(b)(1) Guidelines. As set forth at 40 C.F.R. § 230.11, the Corps must make factual determinations regarding the “short and long term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the environment.”<sup>67</sup> This analysis must consider any effects on wetlands, which are broadly defined as any “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”<sup>68</sup> A site qualifies as a wetland if surveys indicate “the presence of hydrophytic vegetation, hydric soils, and wetland hydrology.”<sup>69</sup> The Corps' own guidance also “warns against using only one of the three parameters to determine a wetland boundary”<sup>70</sup> and explicitly states that such an approach can be “misleading.”<sup>71</sup>

True to that warning, EPA conclusively demonstrated in the veto that the Corps' single-factor approach misleadingly excludes known jurisdictional wetlands that must be analyzed under the 404(b)(1) Guidelines. As EPA emphasized in the veto, “[t]he wetlands identified by EMAP and agreed to by the Corps ARE jurisdictional wetlands by virtue of meeting the 3-parameters outlined in the Corps' 1987 Wetland Delineation Manual (i.e., having indicators of wetland hydrology, soils and vegetation).”<sup>72</sup> Yet, due to its singular insistence on a 14-day flood duration, the veto determined that the Corps had falsely excluded 51,792 acres of jurisdictional wetlands in the two-year floodplain.<sup>73</sup> Accordingly, EPA rejected the Corps' approach as contrary to real world evidence and the 404(b)(1) Guidelines.

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<sup>67</sup> 40 C.F.R. § 230.11.

<sup>68</sup> *Id.* § 230.3(t).

<sup>69</sup> Clean Water Act 404(c) Final Determination Appx. 5, Attachment A (EMAP Report) at 8; *see also* Corps of Engineers Wetland Delineation Manual (Y-87-1) at 9-10.

<sup>70</sup> Letter from James D Giattina, Director EPA Water Management Division to Kenneth Parrish (Dec. 6, 2005), Enclosure at 2.

<sup>71</sup> Corps of Engineers Wetland Delineation Manual (Y-87-01) at 6 (“sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading”).

<sup>72</sup> Clean Water Act 404(c) Final Determination Appx. 1 at 54 (emphasis in original). EPA's Environmental Monitoring and Assessment Program (EMAP) was used to carry out a statistically valid, field sample of wetlands in the Yazoo Backwater Area in 2003. A detailed discussion of the EMAP process and findings can be found in Section F.1 of these comments.

<sup>73</sup> Clean Water Act 404(c) Final Determination Appx. 5, Attach. A at 22 (Figure 6).



By repeating this foundational error, the DSEIS ignores significant degradation to wetlands caused by the pumps. For example, the Corps provides no analysis of the Proposed Plan's impacts on critically important wetlands that flood for less than 14 consecutive days, even though its own data shows that the Proposed Plan will reduce, if not eliminate, backwater flooding for at least 22,601 acres of these critical wetlands.<sup>74</sup> If the Proposed Plan reduces flooding on wetlands so that they no longer receive 8 consecutive days of inundation to a depth of one foot, as indicated by the Corps' data, those wetlands will no longer provide critical spawning habitat.<sup>75</sup> By disregarding these losses, the Corps once again vastly "underestimates the amount of aquatic spawning habitat adversely affected."<sup>76</sup> Likewise, if the Proposed Plan reduces flooding to a 5-year or greater return interval, which is also indicated by the Corps' hydrologic data, then these wetlands could shift from the riverine backwater wetland subclass to the flats wetland subclass. "This change in HGM subclass would result in the complete loss, by definition, of the functions performed by riverine backwater wetlands (i.e., temporary storage of surface water, organic carbon export and pollutant removal and sequestration functions)."<sup>77</sup> Again though, the Corps entirely overlooked this significant degradation by "wear[ing] blinders that Congress has not chosen to impose."<sup>78</sup> This "head in the sand" approach is arbitrary and capricious.<sup>79</sup>

Instead of addressing the failure to comply with the 404(b)(1) Guidelines documented in the veto,<sup>80</sup> the DSEIS reuses the same flawed methodologies to categorically exclude vast areas of ecologically significant wetlands from its analysis. As a result, the DSEIS looks only at a small subset of impacts to a small subset of wetlands in the Yazoo Backwater Area, which infects the entire analysis. The DSEIS then greatly exacerbates these foundational errors by ignoring the statistically valid, field sampled EMAP analysis and the impacts of the dramatic reductions in flood elevations on the area's wetlands. See Section F.1 of these comments.

Second, the DSEIS greatly compounds its underestimate of impacts to wetlands and other aquatic resources by using yet another methodology decisively rejected in the veto to assess lost wetland functions, and by completely ignoring impacts to the project area's many rivers, streams, and bayous. As a result, the DSEIS understates, obscures, or entirely fails to consider significant and unacceptable degradation caused by the Proposed Plan, as detailed in Sections F.1 and F.2 of these comments.

*Aquatic ecosystems:* The 404(b)(1) Guidelines require a comprehensive analysis of "the nature and degree of effect that the proposed discharge will have, both individually and cumulatively, on the structure and function of the aquatic ecosystem and organisms."<sup>81</sup> However, the DSEIS abjectly fails to do this by once again relying on methodologies decisively rejected by EPA in the veto to severely

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<sup>74</sup> See Email from Kenneth Parrish to Margaret Strand, Re: (Jan. 29, 2020), at 17. A copy of this email is provided at Attachment D to these comments.

<sup>75</sup> DSEIS, Appendix F-8 (Aquatic Resources) at 3.

<sup>76</sup> Clean Water Act 404(c) Final Determination Appx. 6 at 2.

<sup>77</sup> Clean Water Act 404(c) Final Determination at 50.

<sup>78</sup> See *Riverside Irrig. Dist.*, 758 F.2d at 512.

<sup>79</sup> See *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017) (vacating an agency's action that "brushed aside critical facts" and failed to "adequately explain" or "adequately analyze" its policy choice). The discussion in Section F of these comments identifies additional flaws in the Corps' analysis, which further highlight the Corps' failure to comply with the 404(b)(1) Guidelines.

<sup>80</sup> Clean Water Act 404(c) Final Determination Appx I at 28-29, 54.

<sup>81</sup> 40 C.F.R. § 230.11(e).



underestimate the impacts to wetland functions and obscure the significant impacts of those lost functions on fish and wildlife resources. For example:

- The DSEIS fails to provide the requisite analysis, even for the small subset of wetlands it considered. The DSEIS looks only at changes to the duration of inundation, and thereby fails to consider changes in the depth of inundation, even though both of these metrics are critical to aquatic ecosystem functions.<sup>82</sup>
- The DSEIS both understates and obscures the impacts to wetland functions by relying on a scientifically unsound methodology decisively rejected by EPA in the veto, as discussed in detail in Section F.1 of these comments.<sup>83</sup> As a result, the DSEIS arbitrarily assumes that the Proposed Plan will cause no impacts to four of the eight wetlands functions used in the Corps' HGM Approach, even for those wetlands that will experience a decrease in flood duration.<sup>84</sup> The DSEIS also significantly understates the adverse impacts to the wetland function involving the export of organic carbon, contradicting its own scientific studies.<sup>85</sup> The DSEIS compounds these false assumptions by manipulating the data to obscure the significant impacts to wetland functions and fish and wildlife habitat.<sup>86</sup>
- The DSEIS dramatically understates the adverse impacts to aquatic habitats required by the region's vital fisheries, as discussed in detail in Section F.1 and F.8 of these comments. For example, as documented in the veto, riverine wetlands in the Yazoo Backwater Area perform a series of unique functions that depend on a backwater flood-return frequency of five years.<sup>87</sup> Riverine wetlands also provide essential habitat for many species of fish and wildlife, including critical spawning habitat that requires at least 8 consecutive days of overbank flooding to a depth of at least one foot. The Corps simply excluded these critical wetlands from analysis based on an arbitrary limitation that defies the science and ignores EPA's expert judgment.
- The DSEIS fails entirely to evaluate impacts to the many rivers, streams, and bayous in the Yazoo Backwater Area, as discussed in Section F.2 of these comments.

*Hydrologic Regime:* The 404(b)(1) Guidelines require factual determinations regarding the impacts of a project "individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water."<sup>88</sup> The DSEIS, however, entirely overlooks or arbitrarily understates the Proposed Plan's "significant changes in the hydrologic regime."<sup>89</sup> For example:

- The DSEIS does not analyze any type of hydrologic changes to wetlands located above the 2-year

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<sup>82</sup> See 40 C.F.R. § 230.11(e); see Section F.1.c of these comments.

<sup>83</sup> See Clean Water Act 404(c) Final Determination Appx. 6; see also Section F.1.b of these comments.

<sup>84</sup> Compare Clean Water Act 404(c) Final Determination, Appendix 6 at 1 with DSEIS Appx. F-5 (Wetlands) at Tables 70-79.

<sup>85</sup> See Section F.1.b of these comments.

<sup>86</sup> *Id.*

<sup>87</sup> Clean Water Act 404(c) Final Determination at 27 (identifying at least three critical functions that are not provided by non-riverine wetlands—detaining floodwater, exporting organic carbon, and removing elements and compounds).

<sup>88</sup> 40 C.F.R. § 230.11(b).

<sup>89</sup> *Id.*



floodplain, does not analyze hydrologic changes to wetlands in the 2-year floodplain that receive less than 14 consecutive days of flooding, and does not analyze changes to the depth of inundation to any wetlands.

- The DSEIS does not assess the effects of the Proposed Plan on low flow conditions in the Yazoo Backwater Area. Intensive agricultural groundwater pumping has depleted the Mississippi River Alluvial Aquifer, creating a cone of depression that captures baseflows in rivers, streams, and headwater tributaries throughout the Yazoo Basin. According to the DSEIS, the resultant low flow conditions in the fall and winter can adversely affect aquatic habitat.<sup>90</sup> Yet, the DSEIS fails to analyze the fact that the Proposed Plan will limit the ability of backwater floods to recharge the aquifer, which in turn will reduce baseflows.<sup>91</sup> The DSEIS also fails to assess the potential for exacerbating low flow conditions as a result of increased irrigation due to the agricultural intensification that accounts for 80% of the benefits of the Yazoo Pumps. As a result, the DSEIS overlooks potentially significant effects on water levels and circulation, in violation of the 404(b)(1) Guidelines.<sup>92</sup>
- The DSEIS fails to adequately analyze the impacts of the Proposed Plan on “circulation including downstream flows” along the Yazoo River which will receive the water discharged from the Yazoo Pumps when the Yazoo River is already at flood stage.<sup>93</sup> EPA and the Conservation Organizations have raised significant concerns about the effects of downstream flooding along the Yazoo River, including increased flood risks to communities located along or near the Yazoo River and increased risk of overtopping or otherwise undermining the integrity of the Yazoo Backwater Levee, as discussed in detail in Section C of these comments. An expert hydrologist has also identified serious deficiencies in the hydrological model used by the Corps. As a result, the Corps “lacks sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.”<sup>94</sup>

*Cumulative Effects on Aquatic Ecosystems:* The 404(b)(1) Guideline require an analysis of the cumulative impacts to the aquatic ecosystem “attributable to collective effect of a number of individual discharges of dredged or fill material.”<sup>95</sup> This analysis is critical because cumulative effects “can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.” Accordingly, the EPA veto analyzed the Yazoo Pumps impacts in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, as well as the Yazoo Backwater Area.<sup>96</sup> Those historic losses further compelled a finding of significant degradation.<sup>97</sup>

Yet, the DSEIS includes no analysis of these cumulative impacts, even though additional wetland losses continue to plague the region. Indeed, if the wetland baseline numbers in the DSEIS are accurate, it means that at least 96,139 acres of wetlands have been lost from the 2-year floodplain since 2003, when

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<sup>90</sup> DSEIS Appx. F-8 (Aquatic Resources) at 14.

<sup>91</sup> Clean Water Act 404(c) Final Determination at 51.

<sup>92</sup> 40 C.F.R. § 230.11(b).

<sup>93</sup> 40 CFR 230.11(b).

<sup>94</sup> 40 C.F.R. § 230.12(a)(3)(iv).

<sup>95</sup> 40 C.F.R. § 230.11(g).

<sup>96</sup> Clean Water Act 404(c) Final Determination at iii.

<sup>97</sup> *Id.*



the EMAP survey was conducted. Such a tremendous loss of wetlands from the 2-year floodplain mandates protection of the remaining wetlands in the project area. At the absolute minimum, the DSEIS must fully account for these highly significant losses in its 404(b)(1) analysis. The failure to do so—despite these purported declines and EPA’s insistence on this issue—is arbitrary and capricious.

In short, there is no rational basis for the Corps’ counterfactual assertion that the Proposed Plan will not cause or contribute significant degradation. To the contrary, even the fundamentally incomplete analysis in the DSEIS confirms that the Proposed Plan will cause significant degradation and thus cannot be constructed.

### 3. The DSEIS Fails To Mitigate the Significant and Unacceptable Adverse Impacts of the Proposed Plan

The 404(b)(1) Guidelines require the Corps to minimize any unavoidable adverse impacts to wetlands or aquatic resources caused by the proposed pumps.<sup>98</sup> To satisfy that obligation, the Corps must first avoid adverse impacts to wetlands. The Corps must then minimize any adverse impacts that cannot be avoided. Finally, the Corps must ensure compensatory mitigation to address the adverse impacts that cannot be avoided or minimized. As a threshold matter, the Corps has not taken any steps to avoid and minimize wetland impacts, as documented throughout these comments. The wholly conceptual mitigation proposed in the DSEIS is entirely inadequate to offset the “unavoidable adverse impacts to wetlands, terrestrial, aquatic, and waterfowl resources,”<sup>99</sup> as detailed in Sections F and H of these comments.

Notably, the DSEIS fails to identify compensatory mitigation measures that are “commensurate with the *amount and type* of impact that is associated with a particular [dredge and fill] permit.”<sup>100</sup> In addition, the DSEIS fails to provide the mandatory detailed mitigation plan that identifies the proposed mitigation site, documents baseline conditions, and demonstrates that the mitigation will be “sufficient to replace lost aquatic resource functions.”<sup>101</sup> The Corps also fails to identify performance standards, monitoring requirements, and adaptive management measures to ensure the short and long-term ecological success of the proposed mitigation.<sup>102</sup> The failure to comply with these obligations takes on even more force and importance where, as here, the proposed project would cause significant, unacceptable degradation that violate the Clean Water Act.<sup>103</sup>

The DSEIS, like the Corps’ 2007 proposal, fails to satisfy these critical mitigation requirements. In 2008, EPA identified a series of shortfalls in the Corps’ conceptual proposal to reforest 10,662 acres of unidentified lands.<sup>104</sup> As a threshold matter, the proposed mitigation was woefully inadequate due to

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<sup>98</sup> 40 C.F.R. § 230.10(d).

<sup>99</sup> DSEIS at 21.

<sup>100</sup> 40 C.F.R. § 230.93(a) (emphasis added).

<sup>101</sup> *Id.* §§ 230.94(c)(1)-(14), 293.93(f)(2).

<sup>102</sup> *Id.* § 230.94(c)(10), (12). *See also* Section H of these comments (documenting the Corps’ failure to ensure adequate mitigation to satisfy NEPA and the Water Resources Development Act).

<sup>103</sup> *See* 33 U.S.C. 1344(c) (authorizing EPA to prohibit discharge that causes “an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.”); 40 C.F.R. § 231.230.10(c) (prohibiting any discharge that “will cause or contribute to significant degradation of the waters of the United States.”); *Id.* § 230.94(c)(1) (“the level of detail of the mitigation plan should be commensurate with the scale and scope of the impacts”).

<sup>104</sup> Clean Water Act 404(c) Final Determination at 60-62; *see also* Clean Water Act 404(c) Final Determination Appx.



the Corps' severe underestimate of the pumps' impacts on aquatic resources.<sup>105</sup> Furthermore, the Corps failed to identify any mitigation sites and instead relied on an unrealistic analysis to create the impression of adequate mitigation when that was not the case.<sup>106</sup> The Corps also failed to provide the necessary mitigation work plans, performance standards, monitoring requirements, or adaptive management measures to ensure the success of any reforestation.<sup>107</sup> Due to the many shortcomings, EPA concluded that the Corps' conceptual plan was insufficient to satisfy the 404(b)(1) Guidelines and ensure "impacts will be reduced permanently below the threshold of significant degradation."<sup>108</sup>

The DSEIS repeats many of these same errors, and then adds even more, resulting in a woefully inadequate mitigation proposal that again violates the 404(b)(1) Guidelines. For example, the DSEIS fails to fully assess a wide array of adverse impacts, so cannot know how much mitigation would be required to offset those impacts. The DSEIS proposes to reforest just 2,405 acres of unidentified lands—an amount that is significantly less than in the Yazoo Pumps proposal vetoed by EPA.<sup>109</sup> The Corps has attempted to—but cannot—mask this severe shortfall by recycling the same faulty and inconsistent analysis rejected by EPA.<sup>110</sup> The Corps proposes to construct 34 groundwater wells far outside of the project area that would cause even more drawdown of the already severely-depleted Mississippi Alluvial Plain aquifer. This out-of-kind mitigation is counter-productive and was decisively rejected in a comprehensive watershed plan due to its unacceptable *adverse* impacts. Yet, the Corps disregarded that watershed plan, as well as basic hydrological principles, in an unrealistic, uninformed, and unfounded attempt to claim mitigation credits. See Section H.2 of these comments for more information on the problems with the groundwater wells.

#### 4. The DSEIS Fails to Demonstrate that the Proposed Plan Will Not Cause or Contribute to Violations of State Water Quality Standards

The Corps may not permit the discharge of dredge and fill material for a project if it causes or contributes to violations of any applicable State water quality standard.<sup>111</sup> Here, the Yazoo Backwater Area already suffers from degraded water quality due to excessive agricultural pollution, which has resulted in elevated levels of pollutants such as sediment, pesticides, and low dissolved oxygen/excessive nutrients. As explained in greater detail in Section F.6, the Proposed Plan will further impair water quality by (1) significantly degrading critical wetland functions that are directly related to water quality, (2) inexplicably eliminating thousands of acres of reforestation that were included in the 2007 plan to offset the pumps' impairment of water quality standards, (3) increasing agricultural production and the use of fertilizers and pesticides, and (4) exacerbating low flow conditions in the late

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<sup>105</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 1. EPA had duty to challenge the Corps' mitigation under 404(c) and did so. *Mingo Logan Coal Co. Inc. v. U.S. Env'tl. Prot. Agency*, 70 F. Supp. 3d 151, 174 (D.D.C. 2014) ("[I]t is EPA that is challenging the notion that those mitigation measures are satisfactory, which is precisely what EPA is authorized to do under section 404(c).").

<sup>106</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 1.

<sup>107</sup> Clean Water Act 404(c) Final Determination at 61.

<sup>108</sup> Clean Water Act 404(c) Final Determination at 62.

<sup>109</sup> The Corps also removed x acres of conservation easements, thereby eliminating any offsetting effects associated with those measures.

<sup>110</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 4.

<sup>111</sup> See 40 C.F.R. § 230.10(b); see also *id.* § 131.21(d) (stating that state water quality standards must be used in "evaluating proposed discharges of dredged or fill material under section 404").



summer and early Fall. Yet, the DSEIS disregards these issues, and thereby fails to ensure the Proposed Plan will not cause or contribute to violations of state water quality standards.

#### **5. The DSEIS Fails to Ensure that the Proposed Plan Will Not Jeopardize Listed Species or Adversely Modify Critical Habitat**

To comply with the 404(b)(1) Guidelines, the Corps must demonstrate that the proposed project will not jeopardize any listed species or adversely modify critical habitat.<sup>112</sup> To fulfill that obligation, the Corps must comply with the Endangered Species Act's procedural requirements, which "call for a systematic determination of the effects of a federal project on endangered species. If a project is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA's substantive provisions will not result. The latter, of course, is impermissible."<sup>113</sup>

As explained in greater detail in Section F.8 of these comments, however, the Corps has failed to provide a systematic determination of the Proposed Plans' effects on listed species and critical habitat. As an initial matter, the DSEIS provides no analysis of the Proposed Plan's impacts on the pondberry, an endangered species that is extremely susceptible to changes in backwater hydrology. As a result, there are no assurances—procedural or substantive—that the Proposed Plan will not jeopardize this species. Second, the DSEIS fails to thoroughly analyze the impacts to other listed species that rely on the Yazoo Backwater Area and will be adversely impacted by the pumps, including the wood stork, least tern, pallid sturgeon, and several species of mussels. Due to these omissions, the Corps cannot approve the Proposed Plan until it reinitiates consultation with the FWS and ensures that the Proposed Plan will not jeopardize the survival or recovery of these species, or adversely modify their critical habitat.

#### **C. The Proposed Plan Does Not Prevent Flooding and It Will Likely Increase Flood Risks for Some Communities**

The DSEIS shows that the Proposed Plan will not prevent flooding in the Yazoo Backwater Area. Even with the Pumps operating, the vast majority of flooded lands would still be underwater and it would take weeks to months to drawdown floodwaters on the remaining lands. The Corps' own data also shows that the Yazoo Pumps will significantly increase flood risks for some communities.

##### **1. The Proposed Plan Does Not Prevent Flooding**

The DSEIS clearly acknowledges that the Proposed Plan will not prevent flooding:

The common perception of the Yazoo Backwater Project is that the pump will eliminate all flooding within the basin. This is far from the truth, because the Project will only address backwater flood events, and it will not even be put into operation during headwater flood events.<sup>114</sup>

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<sup>112</sup> 40 C.F.R. § 230.10(b)(3).

<sup>113</sup> *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985).

<sup>114</sup> 2020 DSEIS Appendix G at para. 170



Even when the Pumps are operating, the Proposed Plan would leave 82% to 89% of flooded lands underwater and take weeks to months to drawdown floodwaters on the remaining lands.<sup>115</sup>

For example, had the Yazoo Pumps been in operation during the 2019 flood, 442,195 acres—**83% of the lands that flooded in 2019**—would still have been underwater, based on data provided by the Corps.<sup>116</sup> Just 17% of the acreage that flooded in 2019 would have been drained by the Yazoo Pumps.

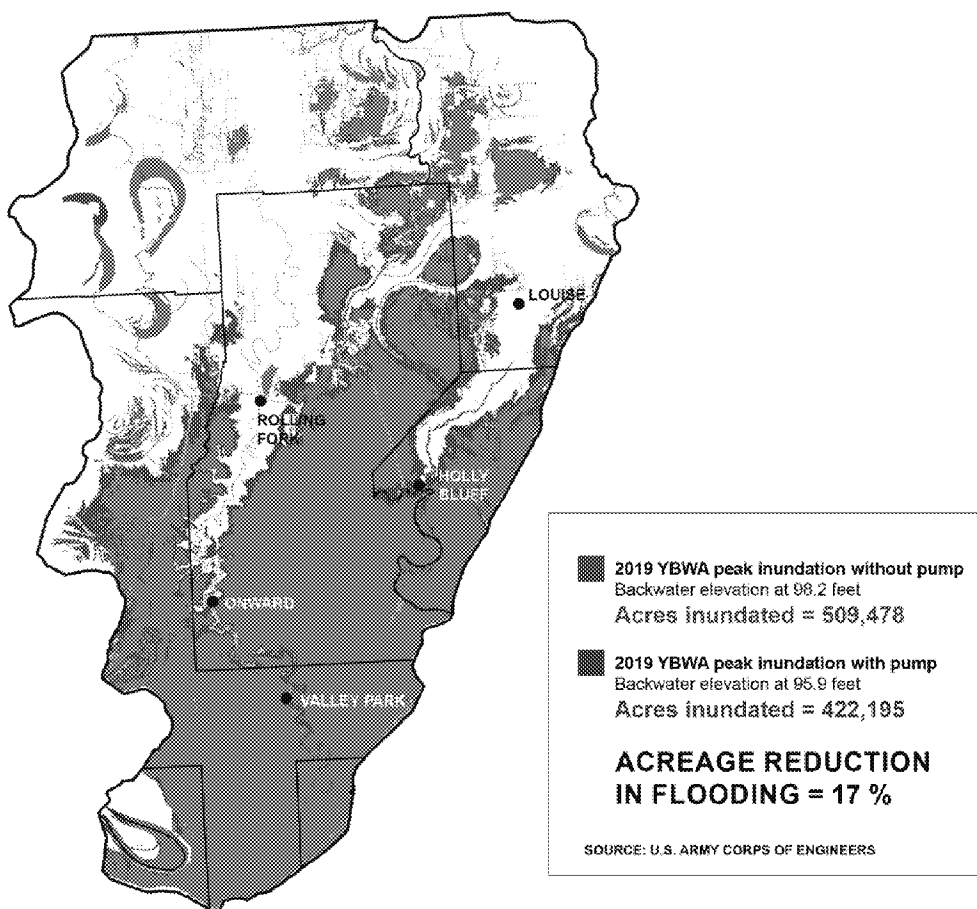


Figure 2, 2019 Flood Inundation Map With and Without the Pumps

<sup>115</sup> DSEIS, Appendix C (Tables), Table 5.3. The “sloped pool” model is more accurate than the more optimistic “flat pool” model.

<sup>116</sup> This data was provided to the Conservation Organizations in response to a November 2, 2020 Freedom of Information Act request submitted by Earthjustice.



Even using the clearly less reliable flat pool calculations provided in the DSEIS, operating the Yazoo Pumps would still leave 65% of lands that would have flooded without the Pumps underwater, and would take weeks to months to drawdown floodwaters on the remaining lands.<sup>117</sup>

The DSEIS also shows the small amount of acreage that would see any kind of benefits from the Yazoo Pumps. For example, during a 20-year flood event, the Proposed Plan would reduce flood damages on just 71,000 acres as measured through the more reliable sloped pool data; and just 115,000 acres as measured through the less reliable flat pool data.<sup>118</sup> This highly limited area has significant implications for the required—but not carried out—assessment of project benefits and calculation of the benefit-cost ratio, as discussed in Section F.11 of these comments.<sup>119</sup>

The sloped pool data is more reliable because it accounts for headwater flooding, which the DSEIS acknowledges already occurs frequently and is projected to occur more frequently due to climate change.<sup>120</sup> The sloped pool data is also more reliable because the Yazoo Pumps are only turned on when precipitation in the Yazoo Basin is causing flooding (i.e., headwater flooding) and the Steele Bayou gates are closed to stop backwater flooding from the Mississippi and Yazoo Rivers in the Yazoo Backwater Area. In situations where there is significant headwater flooding, the Yazoo Pumps will not be able to pump water out of the Yazoo Backwater Area fast enough to prevent flooding.<sup>121</sup>

The Conservation Organizations also note that the DSEIS' inclusion of modeling results showing reductions in stage, volume and area of inundation during the 100-year flood event is both unrealistic and highly misleading.<sup>122</sup> This is because it would be irresponsible for the Corps to operate the Yazoo Pumps during a 100-year flood event when the additional water being pumped into the Yazoo River (up to 9 billion gallons of water a day) would likely overtop the Yazoo Backwater Levee, potentially threatening the levee's integrity and the safety of the 40,000 people who live and work in the Yazoo Backwater Area—the very people that the Pumps purport to protect. The Yazoo Backwater Levee has an elevated risk of crevassing as a result of overtopping and is not accredited due to its low elevation, which is well below the requisite base flood elevation plus three-feet of freeboard.<sup>123</sup>

We also note that because construction and operation of the Yazoo Pumps will not affect the accreditation status of the Yazoo Backwater Levee, the Proposed Plan will not provide flood insurance relief for homeowners in the Yazoo Backwater Area because the entire area will still be mapped as a special flood hazard zone.

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<sup>117</sup> DSEIS, Appendix G (Engineering) at 123, Table 2-26.

<sup>118</sup> DSEIS, Appendix C (Tables) at Table 5.3 and 5.4. Less acreage is protected during smaller flood events, and slightly more acreage is protected during a 50 or 100-year flood event, according to these tables.

<sup>119</sup> In calculating any benefits on these lands, the Corps' calculation of benefits would also have to account for the probability of a particular flood event occurring, and would have to account for the impacts caused before the water is pulled off the land by the Pumps. Without these analyses, the Corps would be overcounting benefits.

<sup>120</sup> DSEIS Appendix G (Engineering) at para. 25-26; and at para. 171: "All of the basin will continue to receive many more headwater floods than backwater floods over the years to come."

<sup>121</sup> See DSEIS Appendix G (Engineering) at para. 157 ("The extent and magnitude of flooding with the SPF [Standard Project Flood] would not be greatly affected by the 14,000-cfs pumping station because the storm was a very intense, short duration event with inflow rates much in excess of the pump capacity.")

<sup>122</sup> DSEIS Appendix G (Engineering) at Table 2-26 and Figure 2-108.

<sup>123</sup> National Levee Database at <https://levees.sec.usace.army.mil/#/levees/system/5905000041/fema> (accessed November 6, 2020). Lack of accreditation means that the Yazoo Backwater Levee cannot protect Yazoo Backwater communities during flood events at or greater than the 1% chance of exceedance (100-year flood event).



## 2. The DSEIS Relies on an Indefensible Hydrological Model to Assess Downstream Flood Impacts and Obscures the Findings of that Indefensible Model

EPA and the Conservation Organizations have raised significant concerns about the Yazoo Pumps increasing flood risks for communities located along or near the Yazoo River, and increasing flood risks within the Yazoo Backwater Area through overtopping or otherwise undermining the integrity of the Yazoo Backwater Levee.

The DSEIS disregards these concerns in a high-handed and conclusory manner by referencing the findings<sup>124</sup> of a report entitled “Impacts of the Yazoo Backwater Pumps to Downstream Stages 22 November 2019”<sup>125</sup> that relied on model that is too flawed to provide any type of reliable analysis. A detailed review of this model was carried out by William Fleenor, Ph.D., an expert with more than 25 years of experience with hydrologic modeling.<sup>126</sup> Dr. Fleenor’s review concludes that the model used by the Corps is fundamentally unreliable and “cannot be trusted to get a correct answer” regarding the impact of the Yazoo Pumps on flood levels in the Yazoo River:

The U.S. Army Corps of Engineers used a one-dimensional hydrodynamic HEC-RAS model<sup>127</sup> to assess the downstream impacts of the Yazoo Backwater Pumps on water elevations (stage) in the Yazoo River during the peak 2019 event. Review of that Model demonstrates that it is not capable of accurately examining stage changes in the Yazoo River because it provides a poor and very inaccurate representation of the Yazoo River, does not properly match measured stages and flows, uses obviously inappropriate boundary conditions, and is not sufficiently calibrated.

More specifically, the Model represents the lower reach of the Yazoo River (the area most likely to be affected by the Yazoo Pumps) as being 17.5 miles, or 37.5%, longer than it actually measures, and this added length alone disqualifies the Model from being reliable. The Model also includes many cross-sections for the Yazoo River that are wider than justified, which results in the Model producing a Yazoo River that can convey more water than reality. The Model demonstrates extraordinarily little tendency to match the amount of timing of the measured flow in the lower reach of the Yazoo River, with the modeled flows at the USGS Redwood gage location (the closest upstream gage to the proposed location of the Yazoo Pumps) often peaking while flows measured by the Redwood gage are in a trough, and the six-month simulation of the Model producing modeled flow at the Redwood gage with 76.2 billion cubic feet less than measured by that gage. Due to the use of inappropriate flow boundary conditions, the Model predicts stage and flow levels that do not match the levels measured by gages in 2019. The base model performance of stage and flow at Yazoo River gages indicates that the Model was not calibrated and thus cannot be trusted to get a correct answer under any type of changes, such as the additional flows generated by the pumps.

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<sup>124</sup> DSEIS, Appendix G (Engineering) at 144-145, paragraph 177.

<sup>125</sup> This study is not included in the DSEIS, but is posted on the Corps’ Yazoo Backwater Area Study website at <https://www.mvk.usace.army.mil/Portals/58/docs/PP/YazooBackwaterReport/YBW%20Pump%20Downstream%20Impacts%2019Dec2019.pdf>.

<sup>126</sup> Dr. Fleenor’s CV is provided at Attachment E to these comments.

<sup>127</sup> This model, referred to in this report as the Model or the 1-D Model, utilizes both Mississippi River reaches, and tributary Yazoo River reaches.



The Model must be more accurately defined, and the boundary conditions better established before the Model can be properly calibrated, and then used to assess the impacts of the Yazoo Backwater Pumps. Use of a two-dimensional model would provide a much better assessment of stage elevations in the primary area of interest due to many of the flows being across the main Yazoo River channel and the crossflow area from the Mississippi River.<sup>128</sup>

The DSEIS nevertheless relies on this indefensible model to justify its assertion that the Yazoo Pumps would not increase flood risks downstream, noting that the model “showed an increase of 0.2 feet at Vicksburg, and 0.3 feet at Steele Bayou Riverside with a 14,000-cfs pumping station” if the Yazoo Pumps had been operating during the 2019 flood event.<sup>129</sup>

In reality, however, a detailed review of the Corps’ flawed model shows that had the Pumps been operating at the Steele Bayou location in 2019, they would have caused at least a 0.45 foot rise in some portions of the Yazoo River with a margin of error of plus or minus 0.5 feet. Thus, the Corps’ own model shows that the Yazoo Pumps could increase flood stage in the Yazoo River by 0.95 feet—almost one extra foot of water when the Yazoo River is already at flood stage. However, even this major increase significantly understates the risks. This is because the Corps’ model relied on much lower flow levels on both the Yazoo and Mississippi Rivers than the levels that were actually reached in 2019.<sup>130</sup> In short, the Corps not only relies on a flawed model but mischaracterizes the findings of that flawed model..

The risks associated with the Corps’ flawed model are highly significant. An accurate understanding of the Proposed Plan’s impact on stage levels in the Yazoo River is critical to knowing whether operation of the Pumps would increase flood levels in the Yazoo River, which would: increase the risks to the integrity of the Yazoo Backwater Levee; affect communities and business located along the Yazoo River, including communities in north Vicksburg that already suffer from excessive flooding; and risk inundating the International Paper wastewater treatment ponds which would release significant amounts of toxic wastewater into the Yazoo River.

#### D. The Proposed Plan is Not Authorized

The Proposed Plan and its 87-foot activation level vastly exceeds the scope of the project’s Congressional authorization. As extensively documented in the 2008 veto, the authorization for the Yazoo Pumps designates lands “located below 90 feet, NGVD, in elevation to serve as a sump area for surface water storage.”<sup>131</sup> In 1959, the Corps determined that the authorized level of protection had been met:

Since the original authorization for Yazoo Backwater Protection, important hydraulic changes have taken place due to improvement of channel efficiency in the Mississippi River and to reservoirs and channel improvement in the Yazoo Basin headwater area. These have resulted in less frequent flooding, and shorter duration of flooding, which makes it feasible to develop a simplification of the authorized plan by eliminating pumping at a large saving in project cost. . . .

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<sup>128</sup> William E. Fleenor, Ph.D., Analysis of the HEC-RAS 1D Model Used by the U.S. Army Corps of Engineers in Assessment of their report: *“Impacts of the Yazoo Backwater Pumps to Downstream Stages 22 November 2019”*, November 1, 2020 at 1. A copy Dr. Fleenor’s report and CV are provided at Attachment E to these comments.

<sup>129</sup> DSEIS, Appendix G (Engineering) at 144-145, paragraph 177.

<sup>130</sup> Fleenor Report at 2, 4, and Appendix.

<sup>131</sup> Clean Water Act 404(c) Final Determination at 7-9.



It is apparent that a protection plan for the Yazoo Backwater Area involving levees and floodgates only, which was not feasible under earlier conditions, is now feasible, and will provide a high degree of protection for the foreseeable future without the necessity of pumping.<sup>132</sup>

The DSEIS provides further evidence that the authorized level of flood protection has been met, through its contention that the “new and more complete” period of record (1978-2019) shows that the Holly Bluff cut-off (which was completed in 1958) and the Yazoo Backwater Levee (which was completed in 1978) caused a one to three foot reduction in the 2-year floodplain elevation.<sup>133</sup>

#### E. The DSEIS Violates NEPA Because It Does Not Evaluate Alternatives

The DSEIS violates NEPA because it does not evaluate alternatives. The failure to analyze alternatives also results in the Proposed Plan being prohibited by the Clean Water Act 404(b)(1) Guidelines because the Corps cannot demonstrate that the Proposed Plan is the least environmentally damaging alternative (and in fact, the Proposed Plan is demonstrably not the LEDPA), as discussed in Section B.1 of these comments.

To comply with NEPA, the DSEIS must “[r]igorously explore and objectively evaluate all reasonable alternatives.”<sup>134</sup> This fundamental NEPA mandate clearly applies to supplemental environmental impact statements,<sup>135</sup> which means that “the existence of reasonable but unexamined alternatives” renders the DSEIS “inadequate.”<sup>136</sup>

The Council on Environmental Quality has made clear that “[r]easonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”<sup>137</sup> Critically, the DSEIS must also include “reasonable alternatives not within the jurisdiction of the lead agency.”<sup>138</sup>

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<sup>132</sup> Id. (quoting Vicksburg District Corps, MR&T Comprehensive Review Report, Annex L, Yazoo Backwater Project Mississippi at 20 (November 1959)).

<sup>133</sup> Appendix F-5 (Wetlands) at 35-36.

<sup>134</sup> 40 C.F.R. § 1502.14.

<sup>135</sup> *Holy Cross Neighborhood Ass'n v. U.S. Army Corps of Engineers*, No. CIV.A. 03-370, 2011 WL 4015694, at \*7 (E.D. La. Sept. 9, 2011) (holding that Army Corps violated NEPA by failing to “re-evaluate” alternatives in a SEIS in light of significant new information); *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813–14 (9th Cir. 2005) (holding that “where changed circumstances affect the factors relevant to the development and evaluation of alternatives,” an agency’s SEIS “must account for such change in the alternatives it considers.”) (citation omitted); *Sierra Forest Legacy v. Ray*, 577 F.3d 1015, 1021-22 (9th Cir. 2009) (holding that additional alternatives analysis was required in an SEIS due to “altered ... modeling techniques” and “substantively new objectives” since preparation of the original EIS); 40 CFR §1502.9 (c) (applying same standards to preparing an EIS and an SEIS). See *High Country Conservation Advocates v. United States Forest Serv.*, 951 F.3d 1217, 1227 (10th Cir. 2020) (holding that agency arbitrarily eliminated an alternative from detailed study in a SEIS).

<sup>136</sup> *Ctr. for Biological Diversity v. United States Dep't of the Interior*, 623 F.3d 633, 642 (9th Cir. 2010); *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 868 (9th Cir. 2004); *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998); *Oregon Natural Desert Ass'n v. Bureau of Land Management*, 531 F.3d 1114, 1121 (9th Cir. 2008).

<sup>137</sup> Forty Most asked Questions Concerning CEQ’s NEPA Regulations, 46 Fed. Reg. 18,026 (March 23, 1981).

<sup>138</sup> 40 CFR §1502.14(c).



Congress has long recognized the importance of the Corps carefully assessing wetland restoration, nonstructural measures and reasonable alternatives that are not within the agency's jurisdiction when evaluating alternatives. For example, the Conference Report for the Water Resources Development Act of 1996 states:

The conferees have included several provisions in section 202 which modify the flood control program of the Corps of Engineers, reflecting an evolution in national flood control policy. The conferees have deleted the provision in the House bill to allow additional review of the proposal without prejudice to its substance. The conferees expect the Corps to continue to consider nonstructural alternatives as required by existing law, and encourage the Corps to improve its efforts at considering nonstructural alternatives in its project study and formulation. Such consideration should include watershed management, wetlands restoration, elevation, and relocation. The Corps is also encouraged to explore alternatives which may be implemented by others, beyond the authority of the Corps. Examples of such alternatives include changes in zoning or development patterns by local officials. Because the Corps has no authority to implement such recommendations, such options are generally not explored or displayed in Corps study documents. However, such alternatives could, in some cases, result in a more effective flood protection program at reduced cost to both Federal and non-Federal interests.

Such alternatives are consistent with current approaches to flood control and recent congressional actions related to reducing Federal expenditures for flooding. For example, Congress enacted the Hazard Mitigation and Flood Damage Reduction Act of 1993, in direct response to the disastrous flooding in the Midwest in 1993. This law allows for increased use of relocation in response to flooding. It would be prudent for the Corps to also increase its review of nonstructural alternatives prior to flooding.<sup>139</sup>

In developing and selecting alternatives, the DSEIS must also comply with the full suite of federal laws and policies designed to protect the environment. These include, the Endangered Species Act, the Clean Water Act, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, and the mitigation requirements applicable to Corps civil works projects. To comply with the Water Resources Development Acts, the Corps also must consider non-structural alternatives and practicable "natural infrastructure alternatives,"<sup>140</sup> and the DSEIS must select an alternative that protects and restores the functions of natural systems.<sup>141</sup>

In short, the DSEIS must evaluate a full range of reasonable alternatives—including nonstructural, natural, and nature-based solutions—that would protect and restore the natural functions of the rivers, streams, and wetlands in the Yazoo Backwater Area. The Corps must ultimately select an alternative that achieves these objectives while causing the least possible amount of harm to the environment.

The DSEIS, however, does none of these things. Instead, it examines just one alternative—the same 14,000 cfs pumping station whose purpose, structure, operation, and impacts fall squarely within the

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<sup>139</sup> H.R. Rep. No. 104-843, at 146 (1996) (Water Resources Development Act of 1996 Conference Report) (discussing the same section that waived the non-federal cost share for the Yazoo Pumps if they are located at Steele Bayou).

<sup>140</sup> 33 U.S.C. 701b-11, 33 USC 2230; 33 USC 2289(a)(2).

<sup>141</sup> 42 USC 1962-3.



scope of the 2008 veto, as discussed in Section A of these comments.<sup>142</sup> This single alternative is also prohibited by the Clean Water Act 404(b)(1) Guidelines, as detailed in Section B of these comments.

### 1. New Information Mandates a Comprehensive Analysis of Alternatives

The DSEIS states explicitly that it does “not reexamine the broad array of alternatives formulated in the 2007 FSEIS”<sup>143</sup> and “will not reformulate the broad array of alternatives examined in the 2007 FSEIS.”<sup>144</sup> Rather, the DSEIS will “analyze the Proposed Plan in light of new environmental and hydraulic data”<sup>145</sup> and “reevaluate the recommended plan as described in the 2007 FSEIS considering new environmental data.”<sup>146</sup> However, a comprehensive review of alternatives is required precisely because of new environmental and hydraulic data.<sup>147</sup>

For example, according to the DSEIS, the “new and more complete” period of record (1978-2019) shows that completion of the Holly Bluff Cut-off in 1958 and the Yazoo Backwater Levee in 1978 caused a significant reduction in flood stages in the Yazoo Backwater Area:

The median  $\geq 5.0\%$  flood duration elevation threshold was lowered approximately one to three feet as a result of implementation of the flood risk reduction features, translating to a large aerial decrease in potential wetland areas when superimposed on the Yazoo Study Area.<sup>148</sup>

In addition, according to the DSEIS, 96,139 acres of wetlands that were in the 2-year floodplain in 2003 are no longer in the 2-year floodplain.<sup>149</sup> The DSEIS claims that 57,000 of these acres are no longer in the 2-year floodplain because of the reduction in the 2-year floodplain elevation noted above.<sup>150</sup>

The DSEIS also provides new information demonstrating the relative ineffectiveness of the Proposed Plan. The DSEIS acknowledges that the Proposed Plan would not prevent flooding, as discussed in Section C of these comments. To the contrary, even when the Pumps are operating, the Proposed Plan would leave 82% to 89% of flooded lands underwater and take weeks to months to drawdown

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<sup>142</sup> The Conservation Organizations recognize that the DSEIS also looks at the no action alternative, but it is clear that the Corps has never had any intention of recommending that no action alternative. To the contrary, the entire focus of the DSEIS and the NEPA process employed by the Corps has been to approve construction of the already-vetoed Proposed Plan.

<sup>143</sup> DSEIS at 6.

<sup>144</sup> DSEIS at 8.

<sup>145</sup> DSEIS at 8.

<sup>146</sup> DSEIS at 6.

<sup>147</sup> E.g., *Holy Cross Neighborhood Ass'n v. U.S. Army Corps of Engineers*, No. CIV.A. 03-370, 2011 WL 4015694, at \*7 (E.D. La. Sept. 9, 2011) (holding that Army Corps violated NEPA by failing to “re-evaluate” alternatives in a SEIS in light of significant new information); *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813–14 (9th Cir. 2005) (holding that “where changed circumstances affect the factors relevant to the development and evaluation of alternatives,” an agency’s SEIS “must account for such change in the alternatives it considers.”) (citation omitted); *Sierra Forest Legacy v. Ray*, 577 F.3d 1015, 1021-22 (9th Cir. 2009) (holding that additional alternatives analysis was required in an SEIS due to “altered ... modeling techniques” and “substantively new objectives” since preparation of the original EIS); 40 CFR §1502.9 (c) (applying same standards to preparing an EIS and an SEIS).

<sup>148</sup> DSEIS, Appendix F-5 (Wetlands) at 35-36.

<sup>149</sup> This means that the 2-year floodplain has lost an area of wetlands more than twice the size of Washington, DC; a tremendous loss of wetlands that must be accounted for.

<sup>150</sup> DSEIS Appendix F-5 (Wetlands) at 35-36.



floodwaters on the remaining lands.<sup>151</sup> Importantly, data that supports the DSEIS (but was not provided in the DSEIS) demonstrates that the Proposed Plan could actually increase flood risks for some communities, as discussed in Section C of these comments.

The DSEIS also shows that the total amount of acres that will see any reduction in flooding during a 20-year flood is 71,000 acres as measured through the more reliable sloped pool data; and 115,000 acres as measured through the less reliable flat pool data.<sup>152</sup> This highly limited area has significant implications for the required—but not carried out—assessment of project benefits and calculation of the benefit-cost ratio. See Section C of these comments for additional information.

Notably, the DSEIS also shows that the Proposed Plan will not prevent flooding in the Yazoo Backwater Area even when the Pumps are operating, as discussed in Section C of these comments. To the contrary, with the Pumps operating, 83% of flooded lands would still be underwater and it will take weeks to months to drawdown floodwaters on the remaining lands. The Corps' own data also shows that the Yazoo Pumps will significantly increase flood risks for some communities. The minimal flood damage reduction benefits that will result from the Proposed Plan, and the high risk that the Proposed Plan will actually increase flood risks for some communities demonstrates the vital need for a rigorous and comprehensive assessment of alternatives.

This data, along with the vast quantity of new environmental data and science—and the changed conditions on the ground that were documented with the Resilience Alternative, discussed below—demonstrates that the DSEIS must in fact conduct a full, rigorous, and objective evaluation of alternatives. This analysis must include a full assessment of the highly practicable Resilience Alternative presented by the Conservation Organizations. The DSEIS must then select the least environmentally damaging alternative that protects and restores the natural functions of the Yazoo Backwater Area.

## **2. The DSEIS Must Assess the Highly Practicable Resilience Alternative that Will Quickly Provide Sustainable Benefits While Restoring the Environment**

During the scoping period on the DSEIS, the Conservation Organizations submitted a detailed Resilience Alternative for the Corps' consideration that would provide immediate, effective, sustainable, and environmentally sound relief to communities in the Yazoo Backwater Area.

The Resilience Alternative utilizes sustainable solutions that are being employed by communities across the country to reduce flood risks, including purchasing wetland reserve and floodplain easements, voluntary buyouts and relocations, and flood-proofing infrastructure (including elevating homes, buildings and roads). These solutions can be carried out under existing federal programs that are currently funded and available for use in the Yazoo Backwater Area, including: U.S. Department of Agriculture easement programs; Federal Emergency Management Agency Building Resilient Infrastructure and Communities "BRIC" program; and Federal Emergency Management Agency post-disaster recovery programs.

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<sup>151</sup> DSEIS, Appendix C (Tables), Table 5.3. The "sloped pool" model is more accurate than the more optimistic "flat pool" model.

<sup>152</sup> DSEIS, Appendix C (Tables) at Table 5.3 and 5.4. Less acreage is protected during smaller flood events, and slightly more acreage is protected during a 50 or 100-year flood event, according to these tables.



The scoping comments submitted by the Conservation Organizations also provided extensive documentation of the practicability and appropriateness of selecting the Resilience Alternative, including documentation of: the strong interest in enrolling lands in conservation easements; the elimination of restriction on enrolling the wettest Yazoo Backwater Area lands into existing conservation easement programs; established conservation priorities for the Yazoo Backwater Area and beyond; and the significant farm subsidy payments that already flow to farms in the Yazoo Backwater Area. This evidence is set forth at pages 11 through 29 of the scoping comments and the attached Resilience Alternative. The Resilience Alternative is provided as Attachment C to these comments. The Conservation Organizations scoping comments are provided as Attachment F to these comments.

As discussed in Section B of these comments, the Resilience Alternative also satisfies all three of the Clean Water Act 404(b)(1) Guideline criteria of a less environmentally damaging practicable alternative.<sup>153</sup> First, the Resilience Alternative is practicable because it relies on available, fully-funded solutions that achieve the project purpose as stated by the Corps, which is “to provide reduced flood damages from the Mississippi and Yazoo Rivers to areas in the lower Mississippi Delta.”<sup>154</sup> Second, the Resilience Alternative avoids the unacceptable adverse impacts of the Proposed Plan on wetlands and other aquatic resources.<sup>155</sup> Third, the Resilience Alternative avoids all other significant environmental impacts associated with the construction and operation of the Proposed Plan.<sup>156</sup> Accordingly, the Corps had an obligation to thoroughly consider and select this proposed Resilience Alternative.

EPA also reiterated the need to consider non-structural alternatives during the scoping period for this DSEIS, highlighting “the significant advancements in nonstructural approaches to flood damage reduction.”<sup>157</sup> Moreover, as discussed in detail in Section B of these comments, EPA has repeatedly urged the Corps to consider non-structural solutions to reduce flood damages while protecting the critical wetland resources in the Yazoo Backwater Area, including in the 2008 veto, along with the Fish and Wildlife Service and the Department of the Interior.<sup>158</sup>

The Conservation Organizations once again call on the Corps to fully examine the Resilience Alternative which fully complies with the Nation’s environmental laws, and will avoid flood risks and reduce flood damages to impacted communities while protecting and restoring—instead of harming—the ecologically rich Yazoo Backwater Area.

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<sup>153</sup> Pursuant to 40 C.F.R. § 230.10(a), “no discharge of dredged or fill material shall be permitted if there is a [1] practicable alternative to the proposed discharge [2] which would have less adverse impact on the aquatic ecosystem, [3] so long as the alternative does not have other significant adverse environmental consequences.”

<sup>154</sup> 2007 FSEIS at 8; See 40 C.F.R. § 230.10(a)(2) (“An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”).

<sup>155</sup> The 404(b)(1) Guidelines reinforce this point by creating a rebuttable presumption that the Resilience Alternative, because it avoids impacts to wetlands, has “less adverse impacts on the aquatic ecosystem, unless clearly demonstrated otherwise.” 40 C.F.R. § 230.10(a)(3).

<sup>156</sup> 40 C.F.R. § 230.10(a)(2).

<sup>157</sup> EPA Scoping Letter (June 15, 2020), at 3.

<sup>158</sup> Clean Water Act 404(c) Final Determination, Appx. 1 at 9. The U.S. Fish and Wildlife Service has also repeatedly recommended use of nonstructural and restoration approaches in lieu of the Yazoo Pumps. E.g., U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 11.



## F. The DSEIS Violates NEPA Because it Fails to Analyze Direct, Indirect, and Cumulative Impacts

In assessing alternatives, the DSEIS must examine, among other things, the direct, indirect, and cumulative environmental impacts of alternatives, the conservation potential of those alternatives, and the means to mitigate adverse environmental impacts that cannot be avoided.<sup>159</sup> These assessments are essential for: understanding the impacts of the various alternatives; determining whether less environmentally damaging alternatives are available; making a reasoned choice among alternatives; identifying the least environmentally damaging alternative, as required by the Clean Water Act; ensuring compliance with the Endangered Species Act; and identifying alternatives that would protect and restore the functions of the Yazoo Backwater Area, as required by the National Water Resources Planning Policy.<sup>160</sup>

Direct impacts are caused by the action and occur at the same time and place as the action. Indirect impacts are also caused by the action, but are later in time or farther removed from the location of the action.<sup>161</sup> Cumulative impacts are:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.<sup>162</sup>

The cumulative impacts analysis ensures that the agency will not “treat the identified environmental concern in a vacuum.”<sup>163</sup> The cumulative impacts analysis must examine the cumulative effects of federal, state, and private projects and actions.<sup>164</sup> The cumulative impacts analysis must also evaluate the cumulative impacts of climate change.<sup>165</sup>

Importantly, as the Council on Environmental Quality has made clear, in situations like those in the Yazoo Backwater Area where the environment has already been greatly modified by human activities, it is **not** sufficient to compare the impacts of the proposed alternative against the current conditions.

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<sup>159</sup> 40 C.F.R. § 1502.16.

<sup>160</sup> 42 USC 1962–3(a).

<sup>161</sup> 40 C.F.R. § 1508.8.

<sup>162</sup> 40 C.F.R. § 1508.7.

<sup>163</sup> *Grand Canyon Trust v. FAA*, 290 F.3d 339, 346 (D.C. Cir. 2002).

<sup>164</sup> The requirement to assess non-Federal actions is not “impossible to implement, unreasonable or oppressive: one does not need control over private land to be able to assess the impact that activities on private land may have” on the project area. *Resources Ltd., Inc. v. Robertson*, 35 F.3d 1300, 1306 (9th Cir. 1993).

<sup>165</sup> *See Center for Biological Diversity v. Nat’l Hwy Traffic Safety Administration*, 538 F.3d 1172, 1217 (9th Cir. 2008) (holding that analyzing the impacts of climate change is “precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct” and that NEPA requires analysis of the cumulative impact of greenhouse gas emissions when deciding not to set certain CAFE standards); *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 711 (9th Cir. 2009) (NEPA analysis properly included analysis of the effects of climate change on polar bears, including “increased use of coastal environments, increased bear/human encounters, changes in polar bear body condition, decline in cub survival, and increased potential for stress and mortality, and energetic needs in hunting for seals, as well as traveling and swimming to denning sites and feeding areas.”).



Instead, the baseline must include a clear description of how the health of the resource has changed over time to determine whether additional stresses will push it over the edge.<sup>166</sup>

The DSEIS must provide “quantified or detailed information” on the impacts, including the cumulative impacts, so that the courts and the public can be assured that the Corps has taken the mandated hard look at the environmental consequences of the project.<sup>167</sup> If information that is essential for making a reasoned choice among alternatives is not available, the Corps must obtain that information unless the costs of doing so would be “exorbitant.”<sup>168</sup>

The DSEIS must be based on “high quality” science and information and the Corps must “insure professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements.”<sup>169</sup>

To properly analyze impacts from the Proposed Plan, it is also essential that the DSEIS provide a detailed operating plan for the Yazoo Pumps, and examine the full suite of impacts in light of that operating plan and reasonably foreseeable deviations from that plan because the Corps retains the ability to modify operating plans. The DSEIS must also fully analyze and account for the potential for additional or more intensive harm to conservation lands and other sensitive habitats from operating the Pumps at the new Deer Creek location, which is closer to the Delta National Forest and other conservation lands than the original Steele Bayou site.

The DSEIS falls woefully short of meeting these longstanding NEPA requirements.

#### 1. The DSEIS Severely Underestimates Adverse Impacts to Hemispherically Significant Wetlands

The DSEIS analysis of wetland impacts is abjectly flawed and lacks even the most basic level of scientific integrity.<sup>170</sup> It repeats errors that were decisively rejected by EPA in the 2008 veto; improperly assesses only a small subset of impacts to a smaller subset of wetlands in the project area; ignores profound shifts in flood inundation levels; and disregards statistically valid, field sampled wetland data. As a result, the DSEIS significantly understates the adverse impacts of the Yazoo Pumps on the hemispherically significant wetlands of the Yazoo Backwater Area—an error that infects the entire analysis.

Notably, the DSEIS does not even mention the extensive critique of the Corps’ wetlands assessment methodologies documented by EPA in the 2008 veto. Indeed, the only three sentences in the DSEIS that

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<sup>166</sup> Council on Environmental Quality, Considering Cumulative Effects Under the National Environmental Policy Act at 41 (January 1997).

<sup>167</sup> *Neighbors of Cuddy Mountain v. U. S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 87 (2d Cir. 1975).

<sup>168</sup> 40 C.F.R. § 1502.22 (emphasis added).

<sup>169</sup> 40 C.F.R. § 1502.24 (“Agencies shall insure professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements”); *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1159-60 (9th Cir. 2006) (quoting 40 CFR §1502.24).

<sup>170</sup> The Conservation Organizations also note that the Wetland Appendix released for public comment with the DSEIS is marked “DRAFT—NOT FOR DISTRIBUTION”. As a result, the public has no way of knowing whether this Wetland Appendix is in fact the one that the Corps intended to release for public comment.



mention the veto state only that the veto was issued.<sup>171</sup> Instead of modifying its wetlands assessment to address the extensively documented critiques in the 2008 veto, the DSEIS ignores EPA's expertise and relies on the very same flawed approach that was decisively rejected by EPA in the veto.

The Yazoo Pumps would drain an area that:

contains some of the richest natural resources in the nation including a highly productive floodplain fishery, one of only a few remaining examples of the bottomland hardwood forest ecosystem which once dominated the Lower Mississippi Alluvial Valley, and is one of only four remaining backwater ecosystems with a hydrological connection with the Mississippi River.”<sup>172</sup>

Forested wetlands have long been recognized as vitally important and as being “among the Nation’s most important wetlands.”<sup>173</sup> The bottomland hardwood wetlands of the Lower Mississippi River Valley:

“are prime overwintering grounds for many North American waterfowl, including 2.5 million of the 3 million mallards of the Mississippi Flyway, nearly all of the 4 million wood ducks and many other migratory birds. Numerous finfishes depend on the flooded hardwoods for spawning and nursery grounds. These wetlands support many other species of wildlife, including deer, squirrel, raccoon, mink, beaver, fox and rabbit. They also play a vital role in reducing flooding problems by temporarily storing large quantities of water and by slowing the velocity of flood waters. In the process, these wetlands remove chemicals such as fertilizers and pesticides from the water, trap soil eroding from nearby farmlands, and recharge ground water supplies.”<sup>174</sup>

As the 2008 Clean Water Act 404(c) Final Determination makes clear, the “construction and operation of the proposed Pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated.”<sup>175</sup> The ecological implications of these changes are enormous, because hydrology is “the single most important determinant of the establishment and maintenance of specific types of wetlands and wetland processes.”<sup>176</sup>

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<sup>171</sup> DSEIS at 14 (“No Record of Decision was signed due to the EPA vetoing the project in August 2008 under Section 404(c) of the Clean Water Act (CWA) citing ‘adverse impacts on wetlands and their associated fisheries and wildlife resources are unacceptable.’”); DSEIS at 18 (“The 2007 Main Report had been finalized prior to 2008 when EPA indicated it would exercise a veto of the document citing concerns related to Section 404(c) of the CWA and unacceptable effects on fishery areas and wildlife.”); DSEIS, Appendix F-4 (HTRW) at 2 (“No Record of Decision (ROD) was signed due to the U.S. Environmental Protection Agency (EPA) vetoing the 2007 Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (2007 FSEIS) in August 2008 due to “adverse impacts on wetlands and their associated fisheries and wildlife resources are unacceptable” citing Section 404(c) of the Clean Water Act.”).

<sup>172</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 1.

<sup>173</sup> Report to Congress, Secretary of the Interior, Impact of Federal Programs on Wetlands, 1988, Volume I at 39.

<sup>174</sup> *Id.*

<sup>175</sup> Clean Water Act 404(c) Final Determination at i.

<sup>176</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (5th ed.) (2015) at 112 (emphasis in original).



Among many other things:

Hydrology affects species composition and richness, primary productivity, organic accumulation, and nutrient cycling in wetlands. . . . Water depth, flow patterns, and duration and frequency of flooding, which are the result of all the hydrologic inputs and outputs, influence the biochemistry of the soils and are major factors in the ultimate selection of the biota of wetlands. . . . the hydrology of a wetland directly modifies and changes its physiochemical environment (chemical and physical properties), particularly oxygen availability and related chemistry, such as nutrient availability, pH, and toxicity (e.g., the production of hydrogen sulfide). Hydrology also transports sediments, nutrients, and even toxic materials into wetlands, thereby further influencing the physiochemical environment. . . . Hydrology also causes water outflows from wetlands that often remove biotic and abiotic material, such as dissolved organic carbon, excessive salinity, toxins, and excess sediments and detritus.”<sup>177</sup>

Critically, even small alterations in wetland hydrology can produce significant, ecosystem-wide changes, as the seminal textbook on wetlands makes clear:

**When hydrologic conditions in wetlands change even slightly, the biota may respond with massive changes in species composition and richness and in ecosystem productivity.**<sup>178</sup>

Wetlands maintained by overbank flooding are particularly productive: “Pulse-fed wetlands are often the most productive wetlands and are the most favorable for exporting materials, energy, and biota to adjacent ecosystems.”<sup>179</sup> The Yazoo Pumps would cut off the hydrological cycle of overbank flooding that is well recognized as being “critically important to maintenance of project-area wetland and aquatic habitat values, including fisheries production” and that provides the biochemical link to the rest of the lower Mississippi Alluvial Valley ecosystem.<sup>180</sup>

The Corps recognizes that pulse-fed riverine wetlands provide at least three critical functions that are not provided by non-riverine wetlands (detaining floodwater, exporting organic carbon, and removing elements and compounds).<sup>181</sup> Riverine wetlands provide essential habitat for many species of fish and wildlife, including critical spawning habitat.<sup>182</sup>

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<sup>177</sup> Id. at 111-112.

<sup>178</sup> Id. at 112 (emphasis added).

<sup>179</sup> Id. at 119.

<sup>180</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 11.

<sup>181</sup> USACE Engineer Research and Development Center, *A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley*, ERDC/EL TR-13-14 (July 2013) at 27. This HGM Guidebook assigns 6 functions to pulse-fed wetlands with a return interval of 5 years or less (detain floodwater, export organic carbon, detain precipitation, cycle nutrients, maintain plant communities, and provide fish and wildlife habitat), but assigns just 4 functions to non-riverine wetlands (detain precipitation, cycle nutrients, maintain plant communities, and provide fish and wildlife habitat). The Corps’ 2002 HGM Guidebook, developed for the Yazoo Pumps project, assigns a third function that is only supplied by pulse-fed riverine wetlands (remove elements and compounds). USACE Engineer Research and Development Center, *A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Selected Regional Wetland Subclasses, Yazoo Basin, Lower Mississippi River Alluvial Valley*, ERDC/EL TR-02-4 (April 2002).

<sup>182</sup> See, e.g. Clean Water Act 404(c) Final Determination, Technical Appendices.



The Corps' 2013 Guidebook on the Hydrogeomorphic Approach (HGM) to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley (which includes the Mississippi Yazoo Backwater Area) states that the 5-year floodplain is the cut-off between riverine and other types of wetlands: "a wetland must be in the 5-year floodplain of a stream system to be included within the Riverine Class. This return interval is regarded as sufficient to support major functions that involve periodic connection to stream systems."<sup>183</sup>

Despite the importance of wetlands in the 5-year floodplain and of wetlands that receive less than 14 consecutive days of flooding (often referred to as "short-hydroperiod wetlands"), the 2007 FSEIS arbitrarily and inappropriately excluded consideration of these types of wetlands.<sup>184</sup> The 2007 FSEIS acknowledges that it did not evaluate impacts to short-hydroperiod wetlands, and did not evaluate impacts to wetlands sustained by sources other than backwater flooding.<sup>185</sup>

As a result of these arbitrary limits, the 2007 FSEIS completely excluded consideration of impacts to at least 24,000 acres of wetlands in the 2-year floodplain and to all wetlands located outside the 2-year floodplain, as recognized in the 2008 Clean Water Act 404(c) Final Determination:<sup>186</sup>

EPA's concerns regarding this proposed project are amplified because we believe the spatial extent of wetlands potentially impacted by the proposed project is much greater than that estimated in the FSEIS. As discussed in Appendix 5, EPA's Environmental Monitoring and Assessment Program (EMAP) analysis identified approximately 52,000 acres of wetlands which are located on the 2-year floodplain but outside of the wetland assessment area established in the FSEIS (Figure 5). EPA believes that as much as 24,000 acres of these 52,000 acres of wetlands are connected to backwater flooding and will be adversely impacted by the project to an even greater degree than the wetlands considered in the FSEIS. However, the FSEIS did not evaluate impacts to these wetlands.<sup>187</sup>

The gross underestimate of wetland impacts in the 2007 FSEIS was also documented in a January 2008 independent hydrology analysis prepared by Nutter & Associates, which concluded that the Corps' 2007 SEIS failed to account for at least 37,000 additional acres of wetlands that would be completely drained

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<sup>183</sup> USACE Engineer Research and Development Center, A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley, ERDC/EL TR-13-14 (July 2013) at 27.

<sup>184</sup> The many additional failings in the 2007 FSEIS are documented in the May 5, 2008 comments of American Rivers, Delta Land Trust, Earthjustice, Environment America, Environmental Defense Fund, Gulf Restoration Network, National Audubon Society, National Wildlife Federation, Sierra Club, and the Surfrider Foundation—Central Gulf Coast Chapter on the Proposed Determination to prohibit the use of disposal sites for dredged or fill material in connection with the construction of the Yazoo Backwater Area Project. These comments are provided at Attachment G to these comments. Many other commenters also highlighted the major problems with the 2007 FSEIS, making it fundamentally inappropriate for the Corps to tier this SEIS to the 2007 FSEIS.

<sup>185</sup> 2007 FSEIS Main Report at 141. The 2007 FSEIS also acknowledged that if it had calculated impacts based on the "upper 90 percent confidence" range, it would have concluded that operation of the Yazoo Pumps would affect 95,200 acres of wetlands, with 44,600 acres of wetlands becoming non-jurisdictional and an additional 50,600 acres of wetlands suffering changes in the duration of inundation. 2007 FSEIS Main Report at 142. The 2007 FSEIS did not explain why it did not rely on this confidence range.

<sup>186</sup> Clean Water Act 404(c) Final Determination at iii, 3, 45.

<sup>187</sup> Clean Water Act 404(c) Final Determination at 45-47.



by the Yazoo Pumps, and failed to account for the harm to a substantial number of additional wetland acres due to changes to the duration and extent of inundation of those wetlands.<sup>188</sup>

In light of the significant ecological value of the Yazoo Backwater Area wetlands—and the significant implications of Yazoo Pumps-induced damage to the area’s wetlands and streams for fish and wildlife, water quality, flood damage reduction, and project costs and benefits, among many other things—it is essential that the DSEIS properly account for the full extent of wetland impacts that will be caused by construction and operation of the Yazoo Pumps.

The DSEIS, however, clearly does not do this as discussed in detail below. Instead, the DSEIS arbitrarily and inappropriately constrains its analysis of wetland impacts by repeating the errors that were decisively rejected by EPA in the 2008 veto. As a result, the DSEIS dramatically understates the impacts of the Yazoo Pumps on the rich array of wetlands, rivers, streams, aquatic resources, and wildlife in the project area.

#### a. The DSEIS Arbitrarily Constrains Its Analysis of Impacts to Wetlands

Repeating errors explicitly rejected as improper by EPA in the 2008 veto, the DSEIS arbitrarily and dramatically constrains its analysis of impacts to wetlands. The DSEIS looks only at impacts to the small subset of wetlands located within the 2-year floodplain that receive  $\geq 14$  consecutive days of flooding. The DSEIS further limits this assessment by looking only at changes to the duration of inundation on that small subset of wetlands.

The DSEIS does not analyze any type of hydrologic changes to wetlands located above the 2-year floodplain, does not analyze hydrologic changes to wetlands in the 2-year floodplain that receive less than 14 consecutive days of flooding, and does not analyze changes to the depth of inundation to any wetlands. Each of these types of changes can have highly significant impacts that must be evaluated to understand the full scope of impacts from the Yazoo Pumps, as made clear by EPA in the 2008 veto. For example, if riverine wetlands in the project area were to no longer receive 8 consecutive days of at least 1 foot of overbank flooding as a result of the Yazoo Pumps, those wetlands would lose all of their fish spawning habitat functions.<sup>189</sup> Even small changes in the extent and level of inundation of wetlands in the Yazoo Backwater Area could cause “massive changes in species composition and richness and in ecosystem productivity.”<sup>190</sup>

Because of these arbitrary restrictions, the DSEIS examines potential impacts to just 39% of the total wetland acres in the project area. There are 212,284 total acres of wetlands in the Yazoo Backwater Area 100-year floodplain,<sup>191</sup> many of which are hydrologically connected to stream channels, as

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<sup>188</sup> Nutter & Associates, Inc., Technical Memorandum No. 07-059.01, Review of the USACE Yazoo River Backwater Area Reformulation Report, Prepared for National Wildlife Federation American Rivers, January 22, 2008. A copy of this report is provided at Attachment H to these comments.

<sup>189</sup> DSEIS, Appendix F-8 (Aquatic Resources) at 3.

<sup>190</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (5th ed.) (2015) at 112.

<sup>191</sup> In 2003, EPA in coordination with the Corps, the U.S. Fish and Wildlife Service, and the Natural Resources Conservation Service, conducted a field based, statistical survey of wetlands in the Yazoo Backwater Area using EPA’s Environmental Monitoring and Assessment Program (EMAP) protocols. This survey identified 212,284 acres of wetlands in the study area. Clean Water Act 404(c) Final Determination, Appendix 5 at 1. The DSEIS does not contend that these baseline wetland numbers are invalid.



documented in the 2008 veto.<sup>192</sup> However, the DSEIS looks at changes to the duration of inundation on just 82,981 acres of wetlands.<sup>193</sup>

Notably, however, even this arbitrary and severely limited assessment of just one type of impact to a small subset of wetlands in the project area acknowledges adverse impacts to 38,774 acres of wetlands in the 2-year floodplain. As discussed in Section A of these comments, this level of impact is explicitly prohibited by the 2008 veto. As discussed in Section B of these comments, this level of impact is unquestionably prohibited by the Clean Water Act 404(b)(1) Guidelines.

EPA conclusively demonstrated in the veto that the Corps' decision to look only at changes to the duration of inundation misleadingly excludes known jurisdictional wetlands that must be analyzed under the 404(b)(1) Guidelines. As EPA emphasized in the veto, "[t]he wetlands identified by EMAP and agreed to by the Corps ARE jurisdictional wetlands by virtue of meeting the 3-parameters outlined in the Corps' 1987 Wetland Delineation Manual (i.e., having indicators of wetland hydrology, soils and vegetation)."<sup>194</sup> Yet, due to its singular insistence on a 14-day flood duration, the veto determined that the Corps had falsely excluded 51,792 acres of jurisdictional wetlands in the two-year floodplain.<sup>195</sup> Accordingly, EPA rejected the Corps' approach as contrary to real world evidence and the 404(b)(1) Guidelines.<sup>196</sup>

The Corps' own data also demonstrates that the DSEIS' arbitrary and improper restrictions dramatically understate wetland impacts. For example, modeling data in the Corps' files (but not included in the DSEIS) shows that the Proposed Plan will reduce, if not eliminate, backwater flooding on at least 22,601 acres of wetlands that currently flood for less than 14 consecutive days.<sup>197</sup> According to the DSEIS Migratory Bird Appendix, an MVK hydrologic analysis shows that the Proposed Plan would cause a loss of "up to 34,000 acres of inundated habitat including 23,500 acres of inundated floodplain forest for water- and wetland-dependent birds (e.g., herons, egrets, ibises) that utilize this habitat for foraging or breeding" in the 25% exceedance elevation, which was not accounted for in the DSEIS wetlands assessment.<sup>198</sup> If the Proposed Plan reduces flooding on wetlands so that they no longer receive 8 consecutive days of inundation to a depth of one foot, as indicated by the Corps' data, those wetlands

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<sup>192</sup> Clean Water Act 404(c) Final Determination, Appendix 7 (Wetland Connectivity Analysis).

<sup>193</sup> DSEIS, Appendix F-5 (Wetlands) at Table 85. By comparison, the 2007 Yazoo Pumps EIS looked at the potential for impacts to 189,600 acres of wetlands which it determined were both in the 2-year floodplain and received  $\geq 14$  consecutive days of flooding. Notably, the 2008 veto determined that EPA's statistically valid, field based survey had "identified approximately 52,000 acres of wetlands which are located on the 2-year floodplain but outside of the wetland assessment area" that the Corps used in 2007 and concluded that "EPA believes that as much as 24,000 acres of these 52,000 acres of wetlands are connected to backwater flooding and will be adversely impacted by the project to an even greater degree than the wetlands considered in the FSEIS." Clean Water Act 404(c) Final Determination at 45.

<sup>194</sup> Clean Water Act 404(c) Final Determination Appx. 1 at 54 (emphasis in original). EPA's Environmental Monitoring and Assessment Program (EMAP) was used to carry out a statistically valid, field sample of wetlands in the Yazoo Backwater Area in 2003. A detailed discussion of the EMAP process and findings can be found in Section F.1 of these comments.

<sup>195</sup> Clean Water Act 404(c) Final Determination Appx. 5, Attach. A at 22 (Figure 6).

<sup>196</sup> See

<sup>197</sup> See Email from Kenneth Parrish to Margaret Strand, Re: (Jan. 29, 2020), at 17. A copy of these email is provided at Attachment D to these comments.

<sup>198</sup> DSEIS, Appendix H (in the Migratory Bird section of this Appendix) at 6.



will no longer provide critical spawning habitat.<sup>199</sup> Likewise, if the Proposed Plan reduces flooding to a 5-year or greater return interval, which is also indicated by the Corps' hydrologic data, then these wetlands could shift from the riverine backwater wetland subclass to the flats wetland subclass. "This change in HGM subclass would result in the complete loss, by definition, of the functions performed by riverine backwater wetlands (i.e., temporary storage of surface water, organic carbon export and pollutant removal and sequestration functions)."<sup>200</sup>

There is no scientific basis, or any other type of rational justification, for failing to evaluate impacts to wetlands located above the 2-year floodplain or to wetlands that receive less than 14 consecutive days of overbank flooding. To the contrary, the EPA veto; the 404(b)(1) Guidelines; the Corps' own Hydrogeomorphic (HGM) Approach protocols; and the fundamental science of wetland functions and values, ecological processes, ecosystem services, and fish and wildlife habitat requirements make clear that the DSEIS has imposed arbitrary, improper, and severe limitations on its analysis of wetland impacts. This "head in the sand" approach to assessing wetland impacts is arbitrary and capricious.<sup>201</sup>

**b. The DSEIS Wetland Analysis Cannot Be Reconciled with the Baseline Wetland Acreage Identified Through the Statistically Valid, Field Sample Survey of Wetlands Carried Out Under the EPA EMAP Protocol**

The DSEIS wetland analysis cannot be reconciled with the baseline wetland acreage identified through the statistically valid, field sample of wetlands carried out under EPA's Environmental Monitoring and Assessment Program (EMAP).

EPA carried out its EMAP survey in 2003, in coordination with the Corps, the U.S. Fish and Wildlife Service, and the Natural Resource Conservation Service, to identify the extent of wetlands in the Yazoo Backwater Area that meet the 3-parameters of a wetland.<sup>202</sup> That process relied on flood models and satellite imagery to remotely identify wetlands, which were then verified on the ground with field surveys at 150 randomly-distributed sites.<sup>203</sup> That EMAP analysis determined that there are 212,284 total acres of wetlands in the Yazoo Backwater Area 100-year floodplain, including 179,120 acres of wetlands in the 2-year floodplain.<sup>204</sup> The DSEIS does not contend that this EMAP analysis is no longer valid, and indeed the single sentence in the DSEIS that mentions the EMAP analysis relies on the EMAP findings.<sup>205</sup> The DSEIS instead relies on modeled data to claim that there are now just 82,981 acres of

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<sup>199</sup> DSEIS, Appendix F-8 (Aquatic Resources) at 3.

<sup>200</sup> Clean Water Act 404(c) Final Determination at 50.

<sup>201</sup> See *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017) (vacating an agency's action that "brushed aside critical facts" and failed to "adequately explain" or "adequately analyze" its policy choice). The discussion in Section F of these comments identifies additional flaws in the Corps' analysis, which further highlight the Corps' failure to comply with the 404(b)(1) Guidelines.

<sup>202</sup> See Clean Water Act 404(c) Final Determination Appx. 5, Attachment A (EMAP Report) at 7-8. EMAP stands for Environmental Monitoring and Assessment Program.

<sup>203</sup> *Id.* at 7-10.

<sup>204</sup> Clean Water Act 404(c) Final Determination, Appendix 5 at 1 and Table 2. The veto concluded that the EMAP survey demonstrated that the Corps' 2007 FSEIS improperly excluded 51,792 acres of jurisdictional wetlands in the two-year floodplain and, as a result, overlooked the pumps' degradation of at least 24,000 acres of short hydroperiod wetlands (less than 14-days). This glaring omission undermined the Corps 2007 FSEIS and further supported EPA's finding of significant and unacceptable degradation. Clean Water Act 404(c) Final Determination at 72.

<sup>205</sup> DSEIS, Appendix G (Engineering) at 141 ("The 2004 three tiered EMAP wetland sampling study identified



wetlands in the 2-year floodplain of the Yazoo Backwater Area. DSEIS, Appendix F-5 (Wetlands), Table 85 at 106.

Thus, according to the DSEIS, 96,139 acres of wetlands that were in the 2-year floodplain in 2003 are no longer in the 2-year floodplain.<sup>206</sup> The DSEIS claims that 57,000 of these acres are no longer in the 2-year floodplain because the “new and more complete” period of record (1978-2019) shows that the Holly Bluff cut-off (which was completed in 1958) and the Yazoo Backwater Levee (which was completed in 1978) caused a one to three foot reduction in the 2-year floodplain elevation. Appendix F-5 (Wetlands) at 35-36. However, any changes wrought by those two projects would have been reflected in the 2003 EMAP survey which was carried out when the Holly Bluff cut-off had been in place for 45 years and the Yazoo Backwater Levee had been in place for 25 years.

The dramatic difference between the 2003 EMAP statistically valid field sampled survey and the wetland baseline acreage number used in the DSEIS strongly suggest that the DSEIS wetland baseline acreage numbers are incorrect. As EPA emphasized in the veto, “[t]he wetlands identified by EMAP and agreed to by the Corps ARE jurisdictional wetlands by virtue of meeting the 3-parameters outlined in the Corps’ 1987 Wetland Delineation Manual (i.e., having indicators of wetland hydrology, soils and vegetation).”<sup>207</sup> In fact, the DSEIS wetland maps exclude known jurisdictional wetland sites that were ground-truthed by EPA, NRC, and the Corps with field surveys.<sup>208</sup> The Corps’ reliance on the flawed estimates in the DSEIS is “error, particularly in the face of contrary-real world data.”<sup>209</sup>

The Corps “cannot avoid its duty to confront these inconsistencies by blinding itself to them.”<sup>210</sup> Yet, the Corps makes no effort to examine the survey data in the EMAP Report or address the errors in its analysis. In fact, the Corps explained that it no longer has a complete set of the EMAP data, which it “lost when a hard-drive failed.”<sup>211</sup> The Corps must obtain that information from EPA so that it can identify and correct the errors in its baseline wetland estimate.<sup>212</sup>

The DSEIS wetland baseline also appears to be incompatible with the significant increase in lands enrolled in, and restored to wetlands through, the Wetland Reserve Easement program in the Yazoo Backwater Area since the 2008 veto and with the extensive amount of conservation land in the Yazoo Backwater Area. There are currently an estimated 250,000 acres of conservation lands in the Yazoo Backwater Area, and many of these lands are managed as wetland systems:

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wetlands in every flood frequency zone (one to 100-year.”).

<sup>206</sup> This means that the 2-year floodplain has lost an area of wetlands more than twice the size of Washington, DC; a tremendous loss of wetlands that must be accounted for.

<sup>207</sup> Clean Water Act 404(c) Final Determination Appx. 1 at 54 (emphasis in original). EPA’s Environmental Monitoring and Assessment Program (EMAP) was used to carry out a statistically valid, field sample of wetlands in the Yazoo Backwater Area in 2003. A detailed discussion of the EMAP process and findings can be found in Section F.1 of these comments.

<sup>208</sup> Compare Clean Water Act 404(c) Final Determination Appx. 5, Attach. A at 22 (Figure 6) with DSEIS Appx F-5 (Wetlands) at Fig. 11.

<sup>209</sup> *W. Virginia v. E.P.A.*, 362 F.3d 861, 867 (D.C. Cir. 2004).

<sup>210</sup> *Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1051 (9th Cir. 2010)

<sup>211</sup> See Email from Shane Lauritzen to Stuart Gillespie, Re: FOIA Yazoo Area Pump Project Draft SEIS 2 (Nov. 13, 2020) at 2. A copy of this email is provided at Attachment I to these comments.

<sup>212</sup> See *Am. Wild Horse Pres. Campaign*, 873 F.3d at 932 (vacating an agency’s action that “brushed aside critical facts” and failed to “adequately explain” or “adequately analyze” its policy choice).



Conservation Lands in the Yazoo Backwater Area	
Category	Acres
National Fish and Wildlife Refuges	25,000
National Forest	20,000
State Wildlife Management Areas	118,000
NRCS Easements	50,000
NGO Easements	7,000
Conservation Reserve Program	30,000
<b>Total</b>	<b>250,000</b>

However, if the wetland baseline numbers in the DSEIS are accurate, it means that at least 96,139 acres of wetlands have been lost in the 2-year floodplain since 2003, when the EMAP survey was conducted. Such a tremendous loss of wetlands mandates protection of the remaining wetlands in the project area. At the absolute minimum, the DSEIS must fully account for these highly significant losses in its impacts analyses (including cumulative impacts), mitigation analysis, and in the required—but not carried out—analyses of alternatives, and project costs and benefits.

Even if the 96,139 acres of wetlands continue to exist but are now located above the 2-year floodplain as a result of the highly significant 1 to 3 foot reduction in the project area flood elevations acknowledged in the DSEIS,<sup>213</sup> the resulting change in the level and duration of inundation to those 96,139 acres of wetlands will be enormous and likewise demands protection of the remaining wetlands in the project area. At the absolute minimum, the DSEIS must fully account for these highly significant changes in its impacts analyses (including cumulative impacts), mitigation analysis, and in the required—but not carried out—analyses of alternatives, and project costs and benefits.

**c. The DSEIS Severely Underestimates the Significant Impacts to the Small Subset of Wetlands that Were Examined**

In addition to accurately assessing the areal extent of hydrologic changes, a meaningful analysis of wetland impacts must accurately assess the ecological implications of those changes. For example, the Pumps-induced adverse impacts could, among many other impacts:

- Significantly undermine flood storage, leading to more flooding in the Yazoo Backwater Area since “[w]etlands in particular increase flood storage, reduced flood peaks and increase peak travel time.”<sup>214</sup>
- Significantly undermine nutrient and sediment removal capabilities since “reconnection of bottomland hardwood wetlands to their surrounding watershed through the restoration of surface hydrology is necessary to restore wetland functions important to nutrient and sediment removal.”<sup>215</sup>
- Cause “massive changes in species composition and richness and in ecosystem

<sup>213</sup> DSEIS, Appendix F-5 (Wetlands) at 36-37.

<sup>214</sup> Acreman, M., Holden, J. 2013. How wetlands affect floods. *Wetlands*, 33 (5). 773-786. 10.1007/s13157-013-0473-2.

<sup>215</sup> Hunter, R.G., Faulkner, S.P. & Gibson, K.A. The importance of hydrology in restoration of bottomland hardwood wetland functions. *Wetlands* 28, 605–615 (2008). <https://doi.org/10.1672/07-139.1>.



productivity.”<sup>216</sup>

- Further deplete the already significant low stream flows in the Yazoo Backwater Area and the significantly depleted groundwater in the Mississippi Delta by impacting large swaths of wetlands that contribute to the protection and restoration of stream flow and groundwater recharge.

A comprehensive discussion of the many significant ecological values of riverine wetlands can be found in the 2008 veto (including the Technical Appendices), and comments on the 2007 SEIS submitted by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, and EPA, among others. This critical feedback from these expert agencies should have been fully considered and addressed by the Corps in preparing this DSEIS, but was not.

Instead, the DSEIS relies on modeling assumptions and factors that were decisively rejected by EPA in the 2008 veto to conduct its assessment of lost wetland functions. The DSEIS acknowledges that “the [Functional Capacity Indices] scores reported in the 2007 FSEIS were selected to conduct the current analysis.” DSEIS, Appendix F-5 (Wetlands) at 26. These “Functional Capacity Indices (FCI) are the result of combining the [Hydrogeomorphic Approach] assessment’s hydrologic, plant, soil and landscape indicators to estimate a change in function as the result of change in indicators.”<sup>217</sup>

However, the 2008 veto explicitly rejected the use of the modeling assumptions and factors used by the Corps in 2007 to develop the Functional Capacity Indices because they were fundamentally unreliable:

EPA believes that certain modeling assumptions and factors used by the Corps in the application of [the 2007 Hydrogeomorphic Approach and Habitat Evaluation Procedure] tools lead to a significant underestimation of the proposed pumping station’s adverse impacts on the aquatic ecosystem, as well as a significant overestimation of the project’s environmental benefits.<sup>218</sup>

By using the same Functional Capacity Indices rejected by EPA in 2008, the DSEIS relies on a clearly flawed functional assessment that does not account for the ecological implications of the Yazoo Pumps-induced wetland losses. For example:

- (i) The DSEIS states that the Yazoo Pumps will cause no impacts to four of the eight wetlands functions used in the Corps’ HGM Approach, even for those wetlands that will experience a decrease in flood duration. For example, each of Tables 70-79 in the Wetlands Appendix, which are meant to show changes in AAFCUs due to various changes in flood duration, list zero impacts to the Detain Precipitation, Cycle Nutrients, and Maintain Plant Communities wetland functions. Each of the tables but one also list zero impacts to the Detain Floodwater function; with Table 70 listing just 7 lost AAFCUs to the Detain Floodwater function. The lack of impacts to these four key functions is

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<sup>216</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (5th ed.) (2015) at 112.

<sup>217</sup> Clean Water Act 404(c) Final Determination at 28.

<sup>218</sup> Clean Water Act 404(c) Final Determination at 47. A full analysis of the problems with the Corps’ 2007 Hydrogeomorphic Approach analysis can be found at Appendix 6 of the 2008 Clean Water Act 404(c) Final Determination. This Appendix, along with the entire 2008 Clean Water Act 404(c) Final Determination, of course must be fully considered in the DSEIS and included in the administrative record.



scientifically unsupportable as highlighted by EPA in the 2008 veto.<sup>219</sup> For example, the 2008 veto highlights the failure to account for losses to the Detain Floodwater function as a primary concern because “this is one of the functions which the proposed pumping project is designed to most dramatically impact.”<sup>220</sup> By ignoring impacts to these functions, the DSEIS significantly understates the impacts to wetland functions in the small subset of wetlands that it looked at.

- (ii) The DSEIS significantly underestimates declines in the Export Organic Carbon function. As recognized in a study authored by a Corps scientist:

the flood frequency variable has significant implications for the export organic carbon function, representing a switch effect (or switch index; Smith et al. 2013) with the capacity to either turn the function on/off or weight the impact of other assessment variables on the level of wetland function. If a BHW forest is not subject to flooding then the export of organic carbon to downstream environments cannot occur and the resultant function capacity will remain zero. In contrast if flooding (and potential organic carbon export) does occur, the functional capacity is weighted based upon the frequency of flood events with locations exhibiting flood frequencies  $\leq 2$  years having that capacity to achieve the highest possible level of function (i.e., 1.0 functional capacity index).<sup>221</sup>

The DSEIS completely ignores this reality by assigning Export Organic Carbon functions to wetlands that will no longer flood. The DSEIS assigns an Export Organic Carbon score of 0.39 for wetlands that will no longer flood (i.e., 0% flood duration) with the Pumps in place in Table 73, and an Export Organic Carbon score of 0.26 for wetlands that will no longer flood (i.e., 0% flood duration) with the Pumps in place in Table 70. DSEIS, Appendix F at 94 and 91. As a result, the DSEIS significantly underestimates the impacts of the Yazoo Pumps on the Export Organic Carbon function in the small subset of wetlands that it looked at.

- (iii) The DSEIS could be masking critical adverse impacts as a result of using “the mid-point of each flood duration range” in all of its HGM calculations. DSEIS, Appendix F-5 (Wetlands) at 28. The DSEIS provides no justification for using this mid-point in each and every HGM calculation. Utilizing this midpoint could mask critical adverse impacts because the length and level of inundation has significant implications for ecological services and outcomes.

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<sup>219</sup> Clean Water Act 404(c) Final Determination, Appendix 6 at 1.

<sup>220</sup> Clean Water Act 404(c) Final Determination, Appendix 6 at 1.

<sup>221</sup> Berkowitz, J.F. Quantifying Functional Increases Across a Large-Scale Wetland Restoration Chronosequence. *Wetlands* 39, 559–573 at 570 (2019). <https://doi.org/10.1007/s13157-018-1103-9>.



- (iv) The DSEIS then compounds the many problems with its functional assessments by manipulating the data to obscure significant wetland and fish and wildlife impacts. This manipulation was explicitly rejected in the 2008 veto:

EPA's primary concerns include:

**The summation of assessment units (i.e., Functional Capacity Units and Habitat Units) in the FSEIS obscures significant wetland, fish, and wildlife impacts.** For example, the HGM assessment evaluated eight functions performed by affected wetlands and estimated how these functions would decrease at wetlands adversely impacted by the proposed pumping and increase at reforestation/mitigation sites. These functions are: *detain floodwater, detain precipitation, cycle nutrients, export organic carbon, physical removal of elements and compounds, biological removal of elements and compounds, maintain plant communities, and provide wildlife habitat*. In drawing its conclusion that the proposed project would result in an overall 19.5 percent increase in wetland functions, not only does the FSEIS factor in unsubstantiated and improbable benefits associated with the proposed restoration as discussed below, it also adds the losses and gains for each of the eight functions. This kind of comparison is of concern because it allows large predicted gains in functions such as maintaining plant communities to obscure losses, or significant degradation in other critical water quality related functions.<sup>222</sup>

- (v) The DSEIS then relies on this flawed manipulation of data to create the impression that it has mitigated the impacts of the project on wetlands functions, when in fact it has failed entirely to do so.

The DSEIS adds together all the Pumps-created losses to AAFCUs across all of the eight wetland function categories into a single number of 11,054 lost AAFCUs. DSEIS, Appendix F-5 (Wetlands), Table 80 at 101. That composite figure is almost entirely attributable to losses in three hydrologically-driven wetland functions: Export Organic Carbon, Physical Removal of Elements and Compounds, and Biological Removal of Elements and Compounds; information that is not included with this summation. The DSEIS then relies on this summation of the lost AAFCUs to assert in Table 82 that just 2,405 acres of compensatory mitigation will compensate for this total loss of AAFCUs. DSEIS, Appendix F-5 (Wetlands), Table 82 at 103.

This assertion is fundamentally incorrect, however, as clearly documented in the DSEIS. For example, the DSEIS states that the proposed mitigation would generate 813 AAFCUs for Export Organic Carbon (Table 80). However, Tables 70-79 state that the Pumps will cause a loss of 3,588 AAFCUs for Export Organic Carbon. To mitigate for those losses to the Export Organic Carbon function, the DSEIS would have to provide 10,641 acres of mitigation—more than four times the amount of mitigation proposed. The DSEIS similarly fails to mitigate for the identified losses to the Biological Removal of Elements and Compounds functions. Oddly, the proposed mitigation mainly provides AAFCUs in the areas of Detain Floodwater, Detain Precipitation, Cycle Nutrients, and Maintain

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<sup>222</sup> Clean Water Act 404(c) Final Determination, Appendix 6 at 1 (emphasis in original).



Plant Communities, as shown in Table 80, despite the Corps' impacts analysis (which is clearly inadequate) which shows no impacts to those functions.

As a result, it is clear that the proposed mitigation does not address even the significant underestimate of lost wetland functions acknowledged in the DSEIS. Additional significant problems with the mitigation proposed in the DSEIS are addressed in Section H of these comments.

**d. The DSEIS Does Not Account for Impacts to Wetlands from the Highly Significant Reduction in Flood Elevation Levels**

The DSEIS does not evaluate the impacts of massive reductions in flood stages that have occurred in the project area as a direct result of Corps water resources projects. These changes are highly significant and must be fully accounted for in the DSEIS impacts analyses (including cumulative impacts), mitigation analysis, and in the required—but not carried out—analyses of alternatives, and project costs and benefits. The DSEIS must also ensure that the new stage elevations are used consistently for all analyses in the DSEIS, including for determining project benefits.

According to the DSEIS, completion of the Holly Bluff Cut-off in 1958 and the Yazoo Backwater Levee in 1978 caused a significant reduction in flood stages in the Yazoo Backwater Area:

The median  $\geq 5.0\%$  flood duration elevation threshold was lowered approximately one to three feet as a result of implementation of the flood risk reduction features, translating to a large aerial decrease in potential wetland areas when superimposed on the Yazoo Study Area.

DSEIS, Appendix F-5 (Wetlands) at 35-36. Notably, the DSEIS also must explain why, in the face of these significant changes in flood elevation, the authorized level of flood protection (as set forth in the 1941 project authorization) has not already been achieved. Additional information on this important issue is provided in Section D of these comments.

**e. The DSEIS is Tainted by Its Improper Reliance on Berkowitz 2019**

The DSEIS draws improper conclusions from Berkowitz 2019<sup>223</sup> to support its arbitrarily restricted assessment of impacts to the small subset of wetlands evaluated by the study. These improper conclusions taint the entire SEIS.

The Berkowitz study looked at “56 forested wetland study sites throughout the Yazoo Basin” that were chosen “based upon access to public lands, mapped flood frequency and duration (where available), and site condition to include analyses of mature second growth forest and reforested farmed wetlands.”<sup>224</sup> Of these sites, 44 were monitored for less than one year, “from November 2010 until October 2011.” Only 12 sites were monitored for more than that extremely limited amount of time: “12 wetland monitoring locations were maintained for three to eight years during the 2011–2018 period” in order “to evaluate trends across multiple years.” Based on the extremely limited monitoring at the equally limited and non-representative sample locations, the study provides an even more limited conclusion: “Data suggest that most wetlands examined (87%) would persist in the absence of flooding, and that

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<sup>223</sup> Berkowitz, J.F., D.R. Johnson, and J.J. Price, “Forested Wetland Hydrology in a Large Mississippi River Tributary System”, *Wetlands* (December 2019) (available at <https://link.springer.com/article/10.1007/s13157-019-01249-5>).

<sup>224</sup> *Id.*



duration and inundation patterns differed with dominant water source.”<sup>225</sup>

As demonstrated below, relying on Berkowitz 2019 to justify the arbitrarily restricted wetlands assessment in the DSEIS demonstrates a stunning lack of scientific integrity and a willful refusal to account for the vitally important functions provided by riverine and other wetlands:

- (i) **The DSEIS improperly extrapolates the Berkowitz 2019 findings to the entire Yazoo Pumps project area.**<sup>226</sup> This extrapolation is improper because, as clearly documented in Berkowitz 2019, that study is based on a non-randomized, non-statistically valid sample of wetland locations. As a result, any findings from the Berkowitz study may not be applied—because they in fact do not apply—to the entire project area. Any attempt to extrapolate the Berkowitz findings to the project area must be rejected as unsound.
- (ii) **The DSEIS improperly extrapolates the Berkowitz 2019 conclusions, which were based on an extremely short monitoring period, to the 50+ year life of the Yazoo Pumps.** As noted above, of the 56 forested sites examined in the Berkowitz study, 44 were monitored for less than one year, “from November 2010 until October 2011.” Only 12 sites were monitored for a longer period, “three to eight years during the 2011–2018 period” in order “to evaluate trends across multiple years.”<sup>227</sup> The DSEIS appears to recognize the limitations of the short monitoring period, highlighting in its discussion of Berkowitz 2019 that “locations exhibited no influence of flood inputs during the study.” DSEIS, Appendix F-5 (Wetlands) at 10 (emphasis added). The extremely limited monitoring data in the Berkowitz study cannot account for long-term variability in flooding and precipitation conditions and as a result, cannot be relied upon to draw conclusions regarding the long-term and cumulative impacts of the Yazoo Pumps.
- (iii) **The DSEIS attempts to justify its limited hydrology assessment at least in part on the Berkowitz conclusion that wetlands would “persist” due to rainfall.** Even if this Berkowitz conclusion were correct—which, given the severe limitations of the study, is highly unlikely—it fails to provide any type of meaningful information; it has no meaning in the context of assessing ecological harm (including lost wetland functions and values); and it has no meaning in the context of properly carrying out the NEPA and Clean Water Act assessments required for the Yazoo Pumps, for at least the following three reasons.

First, as noted above, Berkowitz 2019 may not be extrapolated to cover the entire project area, and because it is based on an extremely limited monitoring record the study also cannot provide the information needed to draw conclusions regarding the long-term and cumulative impacts of the Yazoo Pumps.

Second, on its face the Berkowitz 2019 study excludes consideration of hydrologic conditions needed to maintain vital wetland functions. Berkowitz 2019 defines wetland saturation events as “periods where soil inundation or water tables remained within  $\leq 30$

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<sup>225</sup> Id. (emphasis added).

<sup>226</sup> The Corps repeated this improper conclusion during the virtual public hearing on the project.

<sup>227</sup> Berkowitz, J.F., D.R. Johnson, and J.J. Price, “Forested Wetland Hydrology in a Large Mississippi River Tributary System”, Wetlands (December 2019).



cm of the soil surface for  $\geq 14$  consecutive days.”<sup>228</sup> This definition ignores the major functional differences between riverine and other wetlands. For example, under the Berkowitz definition, wetlands whose saturated soils are located no higher than 11.8 inches below the surface of the land are treated the same as wetlands inundated with a foot of flood waters. Clearly, however, wetlands maintained by underground saturation, even if it occurs all year long, do not provide the same functions as wetlands that experience overbank flooding. For example, underground saturation provides no habitat for spawning fish or for many species of migratory waterfowl.

Third, as EPA explained in the veto, if there is a “change in predominant water source from flooding on a 2-year return to precipitation (the result of flooding less frequently) certain functions are lost and others are performed at different levels.”<sup>229</sup> Likewise, the Fish and Wildlife Service explained why backwater flooding is critical to maintaining aquatic habitat.

Ponds that are fed entirely from local precipitation often suffer from low dissolved oxygen, high levels of algae and high temperatures. Episodic hydrologic events, such as a 2-5 year flood event, rejuvenate these shallow water ponds.<sup>230</sup>

Thus, while a wetland may “persist” with precipitation or subsurface water, that assertion simply overlooks the fact that “the functions performed by that wetland change.”<sup>231</sup>

The Corps’ HGM Guidebook similarly recognizes the separate ecological functions provided by backwater flooding and precipitation and that these roles are not interchangeable. For example, the Guidebook recognizes that “low gradient, riverine and river-connected depression wetlands are linked to the stream channel through overbank and backwater flooding. In the case of the Export of Organic Carbon function, the latter reason is of greatest importance.”<sup>232</sup> The Guidebook also recognizes that the remove elements and compounds function “is defined as the ability of the wetland to permanently remove or temporarily immobilize nutrients, metals, and other elements and compounds that are imported to the wetland from various sources, **but primarily via flooding.**”<sup>233</sup> By contrast, precipitation only accounts “for a **small proportion** of the total quantity of elements and compounds imported to the wetland.”<sup>234</sup>

Fourth, as clearly highlighted by EPA in the 2008 veto, a wetland can suffer significant degradation and still “persist.” The 2008 veto highlighted the fact that the Yazoo Pumps would cause thousands of acres to “shift from the riverine backwater wetland subclass to the flats wetland subclass (see Table 2),”<sup>235</sup> which would constitute significant

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<sup>228</sup> Id. at 129.

<sup>229</sup> Clean Water Act 404(c) Final Determination Appx I at 39.

<sup>230</sup> Clean Water Act 404(c) Final Determination Appx. I at 67.

<sup>231</sup> Clean Water Act 404(c) Final Determination Appx I at 52-53.

<sup>232</sup> HGM Guidebook (2002) at 56.

<sup>233</sup> HGM Guidebook (2002) at 58.

<sup>234</sup> HGM Guidebook (2002) at 59.

<sup>235</sup> Clean Water Act 404(c) Final Determination at 50.



degradation in violation of the Clean Water Act. Indeed, saying that a wetland would “persist” means nothing more than that it would continue to exist in some form (presumably, but not necessarily, as a jurisdictional wetland).

## 2. The DSEIS Fails to Analyze Impacts to Streams

The DSEIS fails to analyze the adverse impacts of the Proposed Plan on the many rivers, streams, and bayous in the Yazoo Backwater area. This is a fundamental oversight given the hydrological connectivity between streams, rivers, bayous, and wetlands, which collectively affect the physical, chemical, and biological integrity of downstream waters.

EPA recently undertook a state-of-the-art scientific review that documented the hydrological connections and mechanisms by which streams and wetlands, singly or in aggregate, affect the physical, chemical, and biological integrity of downstream waters. The report, titled “Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence,”<sup>236</sup> makes five major conclusions summarized below:

- The scientific literature unequivocally demonstrates that streams, regardless of their size or frequency of flow, are connected to downstream waters and strongly influence their function.
- The scientific literature clearly shows that wetlands and open waters in riparian areas (transitional areas between terrestrial and aquatic ecosystems) and floodplains are physically, chemically, and biologically integrated with rivers via functions that improve downstream water quality. These systems act as effective buffers to protect downstream waters from pollution and are essential components of river food webs.
- There is ample evidence that many wetlands and open waters located outside of riparian areas and floodplains, even when lacking surface water connections, provide physical, chemical, and biological functions that could affect the integrity of downstream waters. Some potential benefits of these wetlands are due to their isolation rather than their connectivity. Evaluations of the connectivity and effects of individual wetlands or groups of wetlands are possible through case-by-case analysis.
- Variations in the degree of connectivity are determined by the physical, chemical and biological environment, and by human activities. These variations support a range of stream and wetland functions that affect the integrity and sustainability of downstream waters.
- The literature strongly supports the conclusion that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.

- (1) Given these hydrological connections and mechanisms, the DSEIS must analyze and mitigate the impacts of the Proposed Plan on the rivers, streams, and bayous in the Yazoo Backwater Area, including: Changes to water temperature;

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<sup>236</sup> EPA, Connectivity of Streams and Wetlands To Downstream Waters: A Review and Synthesis of the Scientific Evidence (Final Report, 2015), *available* at <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414>.



- (2) Changes to flow, including changes that result from eliminating floodplain wetlands and further reductions in groundwater;
- (3) Change to water quality, including increased sedimentation, nutrient pollution, and toxic contamination; and lower levels of dissolved oxygen (*see* Section F.6 of these comments for more information on required assessments of water quality impacts);
- (4) Changes to the form and function of stream and river channels, which are typically driven by changes in flow patterns, reductions in flow, reduction or loss of natural flood-pulse, and loss of overbank flooding;
- (5) Changes to the floodplain, including particularly to floodplain wetlands; and
- (6) Changes to in-stream and floodplain habitats.

This comprehensive analysis is essential given that the Proposed Pumps would drain vast areas of wetlands and thereby eliminate critical wetland functions that are directly related to water quality. As explained in Section F.6 of these comments, the loss of these wetland functions will degrade water quality, impairing numerous water bodies in the Yazoo Backwater Area. In addition, the Proposed Plan would intensify agricultural production in the Yazoo Backwater Area, resulting in increased cultivation, additional fertilizer and pesticide use, and potential land clearing that further degrade the area's streams. Increased agricultural production will also deplete the regional aquifer, capturing critical baseflows and impairing hydrologically connected rivers, streams, and bayous. The DSEIS overlooks or assumes away these critical impacts, and thereby underestimates the far-reach impacts of the Proposed Plan on hydrologically-connected rivers, streams, and bayous.

### 3. The DSEIS Fails to Analyze Impacts on Downstream Flooding on the Yazoo River.

EPA and the Conservation Organizations have raised significant concerns about the Yazoo Pumps increasing flood risks for communities located along or near the Yazoo River, and increasing flood risks within the Yazoo Backwater Area through overtopping or otherwise undermining the integrity of the Yazoo Backwater Levee.

The DSEIS disregards these concerns in a high-handed and conclusory manner by citing a model<sup>237</sup> that is too flawed to provide any type of reliable analysis. A detailed review of this model was carried out by William Fleenor, Ph.D., an expert with more than 25 years of experience with hydrologic modeling.<sup>238</sup> Dr. Fleenor's review concludes that the model used by the Corps is fundamentally unreliable and "cannot be trusted to get a correct answer" regarding the impact of the Yazoo Pumps on flood levels in the Yazoo River. The flaws with this model are discussed in detail in Section C of these comments, and Dr. Fleenor's review is provided at Attachment E to these comments.

The DSEIS nevertheless relies on this indefensible model to justify its assertion that the Yazoo Pumps would not increase flood risks downstream, noting that the model "showed an increase of 0.2 feet at Vicksburg, and 0.3 feet at Steele Bayou Riverside with a 14,000-cfs pumping station" if the Yazoo Pumps

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<sup>237</sup> DSEIS, Appendix G (Engineering) at 144-145, paragraph 177.

<sup>238</sup> Dr. Fleenor's CV is provided at Attachment E to these comments.



had been operating during the 2019 flood event.<sup>239</sup> In reality, however, the Corps' flawed model shows that had the Pumps been operating at the Steele Bayou location in 2019, they would have caused at least a 0.45 foot rise in some portions of the Yazoo River with a margin of error of plus or minus 0.5 feet, as discussed in Section C of these comments. Thus, the Corps' own model shows that the Yazoo Pumps could increase flood stage in the Yazoo River by 0.95 feet—almost one extra foot of water when the Yazoo River is already at flood stage. However, even this major increase significantly understates the risks. This is because the Corps' model relied on much lower flow levels on both the Yazoo and Mississippi Rivers than the levels that were actually reached in 2019.<sup>240</sup> In short, the Corps not only relies on a flawed model but mischaracterizes the findings of that flawed model.

The DSEIS must address the failings identified in the review carried out by Dr. Fleenor, and must fully and carefully assess the impacts of the Proposed Plan on increasing: flood stages in the Yazoo River; flood risks to communities and businesses located along the Yazoo River; the risk of inundating the International Paper wastewater treatment ponds and releasing significant amounts of toxic wastewater into the Yazoo River; and increasing the risk of overtopping and/or undermining the integrity of the Yazoo Backwater Levee, which could lead to a catastrophic levee failure that would threaten the safety of the very communities the Pumps are purported to protect.

#### 4. The DSEIS Fails to Analyze Impacts to Conservation Lands

The DSEIS fails to evaluate the impacts of the project on conservation lands in the Yazoo Backwater Area and on the wetlands and streams located on those lands. The ecological implications of these impacts—and significance of those implications—must be assessed in light of the significant contribution of these conservation lands to the fish, wildlife, and plant resources in the Yazoo Backwater Area, and throughout the Mississippi River Alluvial Valley.

Conservation lands in the Yazoo Backwater Area include:

- The Yazoo National Wildlife Refuge Complex, which includes Panther Swamp National Wildlife Refuge, Yazoo National Wildlife Refuge, Holt Collier National Wildlife Refuge, and Theodore Roosevelt National Wildlife Refuge;
- Delta National Forest, which is the only bottomland hardwood forest in the National Forest System;
- Twin Oaks Mitigation Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Mahannah Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Lake George Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Phil Bryant Wildlife Management Area; and
- The extensive acreage enrolled in the Wetland Reserve Easement and Conservation Reserve Programs.

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<sup>239</sup> DSEIS, Appendix G (Engineering) at 144-145, paragraph 177.

<sup>240</sup> Fleenor Report at 2, 4, and Appendix, provided at Attachment E to these comments.



Collectively, these conservation lands cover approximately 250,000 acres in the Yazoo Backwater Area:

Conservation Lands in the Yazoo Backwater Area	
Category	Acres
National Fish and Wildlife Refuges	25,000
National Forest	20,000
State Wildlife Management Areas	118,000
NRCS Easements	50,000
NGO Easements	7,000
Conservation Reserve Program	30,000
<b>Total</b>	<b>250,000</b>

In addition, as of November 25, 2003, the Corps also owned 19,463.08 acres of flooding and flowage easements in the Yazoo Backwater project area.<sup>241</sup> Indeed, the DSEIS recognizes that Yazoo Backwater Area “acts like a dry dam, as it stores water during flood events” and explains that the Yazoo Backwater Area is designed to flood prior to the Mississippi River and Tributaries Project Design Flood peak to protect downstream communities along the Mississippi River.<sup>242</sup> Since the area is designed to flood to protect other areas, it is illogical to install pumps to remove the water during flood events. Instead, the Corps should focus on implementing more effective flood risk reduction measures as outlined in the Resilience Alternative. This should be prioritized if the Corps has failed to advise residents of the flood risk where flowage easements were purchased.

In addition to fully assessing the adverse ecological impacts to these conservation and flood easement lands, it is critical that no agricultural or other flood damage reduction benefits be calculated for the conservation and flood easement lands in the Yazoo Backwater Area—the vast majority of which have been purchased and are being managed for conservation purposes using federal and state taxpayer dollars. Instead, the value of the ecosystem services lost due to adverse project impacts on these lands must be quantified and accounted for as a project cost in the required, but not carried out, benefit-cost assessment.

#### 5. The DSEIS Fails to Analyze Operational Impacts Associated with Siting the Pumps at Deer Creek

By moving the Yazoo Pumps to the Deer Creek site, the Proposed Plan places the 14,000 cfs pumping plant much closer to the Delta National Forest (which is managed as a bottomland hardwood wetland system) and other important conservation lands. While the DSEIS provides some information on the direct impacts that will occur at the Deer Creek site, it provides no assessment of the potential impacts to sensitive habitats from operating the Yazoo Pumps at the new location. The DSEIS must carefully analyze whether the Delta National Forest and other conservation lands located near the Deer Creek site would suffer additional or more intensive harm from operating the Pumps at the Deer Creek site.

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<sup>241</sup> U.S. Army Corps of Engineers Response to August 12, 2003 Freedom of Information Act Request for Flowage Easement Data Submitted by American Rivers.

<sup>242</sup> DSEIS Appendix G (Engineering) at 21-22 paragraphs 19-20.



## 6. The DSEIS Fails to Analyze Impacts to Water Quality

The Yazoo Backwater Area already suffers from degraded water quality due to pollutants such as sediment, pesticides, and excessive nutrients/low dissolved oxygen. The Proposed Plan would further impair water quality by (1) degrading thousands of acres of wetlands that play a crucial role in filtering pollutants, (2) inexplicably eliminating thousands of acres of reforestation that were specifically included in the 2007 plan to offset the pumps' impairment of water quality standards, (3) increasing agricultural production and the use of fertilizers and pesticides, and (4) exacerbating low flow conditions in the late summer/early Fall. Yet, the DSEIS disregards these issues, and thereby fails to ensure the Proposed Plan will not cause or contribute to violations of state water quality standards.

First, wetlands perform a series of critical functions that reduce the excessive pollutant levels in the Yazoo Backwater Area. For example, wetlands remove and sequester elements and compounds, which reduces the load of nutrients, heavy metals, pesticides, and other pollutants in rivers and streams.<sup>243</sup> Despite this critical pollutant-filtering role, however, the DSEIS arbitrarily excludes consideration of wetlands in the 5-year floodplain and of wetlands that receive less than 14 consecutive days of flooding (often referred to as "short-hydroperiod wetlands"). As a result, the DSEIS fails to acknowledge the fact that the destruction and degradation of these wetlands by the Proposed Plan would contribute to violations of state water quality standards, as documented by EPA in the veto:

Given that the Yazoo Backwater Area already contains CWA section 303(d)-listed impaired waterbodies (see Appendix 7), the extensive loss of pollutant filtering and removal functions by wetlands impacted by the proposed project could exacerbate the elevated concentrations of the pollutants of concern, potentially causing or contributing to violations of applicable state water quality standards (40 CFR 230.10(b)).<sup>244</sup>

This problem has only gotten worse. Since EPA issued the veto, the Mississippi Department of Environmental Quality (MDEQ) has issued numerous additional TMDLs for streams and rivers in the Yazoo Backwater Area, as identified in the Conservation Organizations' scoping comments.<sup>245</sup> The DSEIS must therefore undertake a comprehensive analysis of the pumps' impacts on wetland functions to ensure the project does not violate state water quality standards, as predicted by EPA.

In fact, the DSEIS demonstrates that the Proposed Plan will degrade wetland functions that "can be directly associated with water quality."<sup>246</sup> For the narrow subset of wetlands considered in the DSEIS, the Corps identifies a loss of 3,588 AAFCUs for the wetland functions of export carbon and biological removal of pollutants, as well as a loss of 3,356 AFFCUs for physical removal of pollutants.<sup>247</sup> The DSEIS

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<sup>243</sup> HGM Guidebook at 58-59.

<sup>244</sup> Clean Water Act 404(c) Final Determination at 30.

<sup>245</sup> For example, in 2006, MDEQ listed numerous rivers in the Yazoo backwater Area as impaired for nutrients (total phosphorous and nitrogen), including Steele Bayou and the Yazoo River. *See, e.g., See TMDL Total Nitrogen and Total Phosphorus For Selected Large Rivers in the Delta* (June 2008), at 4 (available at [https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/Yazoo/Delta\\_Large\\_Rivers\\_FINAL\\_Nutrients\\_TMDL\\_35411.pdf](https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/Yazoo/Delta_Large_Rivers_FINAL_Nutrients_TMDL_35411.pdf))

<sup>246</sup> FSEIS Appx. 16 (Water Quality) ("Three of these functions, Export of Organic Carbon and the Physical and Biological Removal of E/C, can be directly associated with water quality.").

<sup>247</sup> DSEIS Appx. F-5 (Wetlands) at Tables 70-79.



must assess the impacts of these lost functions on water quality for impaired waters in the Yazoo Backwater Project Area, as it did in the 2007 FSEIS.<sup>248</sup>

This analysis is critical for two critical reasons. First, the Corps' data shows that the Proposed Plan will cause or contribute to the impairment of listed water bodies in the Yazoo Backwater Area.<sup>249</sup> In the 2007 FSEIS, the Corps concluded that Plan 4, by degrading wetland functions in the three areas just mentioned, would cause a six-percent decline in streams listed as impaired for sediment and pesticides, as well as five-percent decline for nutrients and three-percent decline for organic enrichment.<sup>250</sup> The Proposed Plan would cause a similar loss of wetland functions, according to the Corps' analysis, thereby further impairing water quality. Yet, the DSEIS omits any analysis of this issue—an approach directly at odds with the 2007 FSEIS and contrary to the Corps' obligation to ensure no violations of water quality standards.

Furthermore, MDEQ has completed numerous additional TMDLs for streams and rivers in the Yazoo Backwater Area since the 2007 FSEIS, including the following TMDLs:

- Organic Enrichment / Low Dissolved Oxygen (DO) for Swiftwater Bayou Watershed (February 2014)
- Total Nitrogen and Total Phosphorus For Silver Creek (June 2008)
- Total Nitrogen and Total Phosphorus For Jaynes Bayou (June 2008)
- Total Nitrogen and Total Phosphorus For Lake Jackson (June 2008)
- Total Nitrogen and Total Phosphorus For Cypress Lake (June 2008)
- Total Nitrogen and Total Phosphorus For Selected Large Rivers in the Delta (June 2008)
- Yazoo River Basin Designated Oxbow Lakes for Sediment (April 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For the False River (April 2008)
- Yazoo River Basin Delta Region for Impairment Due to Sediment (April 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Deer Creek (June 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Snake Creek (June 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Collins Creek (June 2008)

These TMDLs contain significant new information regarding environmental conditions and water quality requirements in the Yazoo Backwater Area, which must be analyzed in the DSEIS, but were not.<sup>251</sup>

Second, the Corps provides no explanation of how the Proposed Plan ensures compliance with water quality standards, despite eliminating 52,900 acres of restoration and reducing the amount of reforestation for mitigation by 8,257 acres as compared to the 2007 proposal. In the 2007 FSEIS, the Corps identified reforestation as the linchpin of offsetting the Yazoo Pumps' adverse impacts on wetland functions and ensuring compliance with water quality standards:

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<sup>248</sup> FSEIS Appx. 16 (Water Quality) at 16-104 ("Results of the HGM analysis were combined with results from the stormwater runoff analysis to address project impacts to TMDL and impaired water bodies.").

<sup>249</sup> *Id.* at Table 16-29.

<sup>250</sup> FSEIS Appx. 16 (Water Quality) at Table 16-29.

<sup>251</sup> See 40 C.F.R. § 1502.9(c)(1).



Reforestation would remove 55,600 acres of agricultural land from production and reduce sediment, pesticide, and nutrient yield in stormwater runoff by 11, 2, and 9 percent, respectively. Scientific analysis of wetland functions shows that reforestation of cleared land will increase the wetland functional capacity for the removal of sediment, nutrients, and historic pesticides from out-of-bank floodwaters by 4, 7, and 9 percent, respectively. Combined benefits from reforestation would be a 15 percent decrease in sediment loading, a 6 percent decrease in legacy pesticide loading, and a 16 percent decrease in nutrient loading.<sup>252</sup>

The Proposed Plan, however, abruptly eliminates the vast majority of the proposed reforestation. Without these critical measures, the Proposed Plan will cause a 15 percent *increase* in sediment loading, a 6 percent *increase* in legacy pesticide loading, and a 16 percent *increase* in nutrient loading, as compared to the 2007 plan. That increase would degrade already-impaired water bodies in the Yazoo Backwater Area, violating state water-quality standards.<sup>253</sup> Yet, the DSEIS provides no explanation for how it will ensure state water-quality standards, despite abruptly eliminating these critical restoration measures.

The DEIS also fails to address the inadequacies in the conceptual mitigation proposal, which proposes significantly less reforestation than the amount already deemed inadequate by EPA. As explained in greater detail below, the proposed reforestation fails to offset the lost wetland functions that are directly associated with maintaining water quality. The Proposed Plan will therefore significantly reduce these critical wetland functions, thereby causing or contributing to the degradation of water quality.

Third, the DSEIS fails to analyze whether the “net result” of the Yazoo Pumps—the loss of wetland capacity coupled with increased agricultural production—would impermissibly degrade waterways in the Yazoo Backwater Area or exceed the limits established in the area’s TMDLs. By draining the Yazoo Backwater Area, the proposed pumps would not just eliminate critical wetland functions, as discussed, but also enable agricultural intensification that accounts for 80% of the benefits of the Yazoo Pumps in the 2007 FSEIS. In fact, the Proposed Plan would encourage agricultural intensification on an even greater acreage than the 2007 plan by (1) eliminating from the Proposed Plan conservation easements on thousands of acres of agricultural lands and (2) reducing water levels behind the Steele Bayou Gate during low flow conditions.<sup>254</sup> The combined result would be a loss in nutrient uptake/transformation by wetlands, and an increase in the nutrient loading from agricultural uses of fertilizer and pesticides. The DSEIS disregards these impacts

Fourth, the DSEIS mischaracterizes the impacts of low dissolved oxygen concentrations in a self-serving attempt to disclaim responsibility for the Proposed Plan’s impacts on an extremely productive fishery. As explained in Section F.8 below, however, there is no scientific basis for the Corps’ sweeping assertion that hypoxia has degraded all aquatic habitat by 60 percent.

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<sup>252</sup> 2007 FSEIS Appx. 16 (Water Quality) at S-1.

<sup>253</sup> Without reforestation, Plan 5 in the FSEIS would increase sediment levels by 11 percent, pesticides by two percent, and nutrients by 9 percent. See FSEIS Appx. 16 (Water Quality) at Table 16-29.

<sup>254</sup> DSEIS at 22.



Furthermore, as explained in the 2007 FSEIS and confirmed in the DSEIS, excessive agricultural pumping is the principal cause of low-dissolved oxygen conditions during the late summer between July and October, “when low DO conditions have the greatest potential for adverse effects to the aquatic environment (the critical period).”<sup>255</sup> The Proposed Plan will, however, exacerbate those conditions in three ways that the DSEIS fails to consider. First, the Yazoo Pumps would reduce the ability of floodwaters to recharge the aquifer to levels that would sustain baseflows.<sup>256</sup> By interfering with this recharge process, the pumps would, in turn, “reduce the amount of water that returns to area streams as baseflow.”<sup>257</sup> Second, the Yazoo Pumps are designed to encourage agricultural intensification, which in turn would lead to additional groundwater pumping for irrigation and other farming purposes from the already severely-depleted aquifer, thereby leading to additional depletions in baseflows during the late summer and early fall. Third, the proposed groundwater wells will further deplete the aquifer, thereby causing unacceptable *adverse* impacts as discussed in greater detail below.

Due to these errors, the Corps has failed to analyze the impacts of the Proposed Plan on water quality, and thereby failed to ensure compliance with state water quality standards.

## 7. The DSEIS Fails to Analyze Impacts to Groundwater

The DSEIS fails to evaluate the impacts of the Yazoo Pumps on further depleting groundwater levels, and the cascading impacts to stream flows and fish and wildlife in the Yazoo Backwater Area and beyond.

Intensive agricultural groundwater pumping has depleted the Mississippi River Alluvial Aquifer, causing some of the most severe groundwater declines in the United States and highly damaging low-flow conditions in many Delta streams. Agricultural groundwater pumping creates a cone of depression that has captured baseflows in rivers, streams, and headwater tributaries throughout the Yazoo Basin. The resultant low flows can adversely affect fish and aquatic habitat as recognized in the DSEIS.<sup>258</sup>

Farms in the Mississippi Delta withdraw an estimated 9 billion gallons of groundwater per day for irrigation from the upper-most aquifer underlying the Mississippi Alluvial Plain. This aquifer is the third largest provider of groundwater in the United States, according to the U.S. Geological Survey. USGS studies show that groundwater levels in parts of the region have dropped more than 100 feet since 1870. This is among the most significant declines of groundwater levels of any region in the United States. Computer models suggest that these significant declines will expand in the coming decades. Groundwater declines and resulting low-flow conditions in many Delta streams are contemporaneous with increases in irrigation, according to the USGS. Low flows in streams threaten fish, mussels and other aquatic life. Low flows also impair water quality and threaten the ability of streams to assimilate wastewater discharges. Government agencies are investing millions of dollars to characterize groundwater declines in the region and implement conservation measures.<sup>259</sup>

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<sup>255</sup> FSEIS Appx. 16 (Water Quality) at 16-78.

<sup>256</sup> Clean Water Act 404(c) Final Determination at 51.

<sup>257</sup> *Id.*

<sup>258</sup> DSEIS Appx. F-8 (Aquatic Resources) at 14.

<sup>259</sup> Killian, C.D., Asquith, W.H., Barlow, J.R.B. *et al.* Characterizing groundwater and surface-water interaction using hydrograph-separation techniques and groundwater-level data throughout the Mississippi Delta, USA. *Hydrogeol J* 27, 2167–2179 (2019) (available at <https://doi.org/10.1007/s10040-019-01981-6>); 2019 Mississippi Water Resources Conference Proceedings (available at [https://www.wrri.msstate.edu/pdf/2019\\_wrri\\_proceedings.pdf](https://www.wrri.msstate.edu/pdf/2019_wrri_proceedings.pdf)); M.L. Reba, J.H. Massey, M.A. Adviento-Borbe, D. Leslie, M.A. Yaeger, M. Anders, and J. Farris, *Aquifer Depletion in the Lower Mississippi River Basin: Challenges and Solutions*, Universities Council on Water Resources Journal of



The proposed Yazoo Pumps project will likely exacerbate groundwater declines and low flows in the project area's streams in at least the following four key ways, but the DSEIS fails to evaluate these potential impacts:

First, the Yazoo Pumps will limit the ability of backwater floods to recharge the aquifer, which in turn will reduce stream baseflows, as recognized by EPA in the veto.<sup>260</sup>

Second, the Pumps-induced wetland losses and adverse impacts will exacerbate the area's already significant groundwater declines. Recent studies demonstrate the significant value of wetlands to groundwater recharge in the Yazoo Backwater Area.<sup>261</sup>

Third, the fundamental purpose of the Yazoo Pumps is to facilitate agricultural intensification—which, according to the 2007 FSEIS, will produce 80% of project benefits—and this intensification almost certainly will lead to increased irrigation and additional groundwater declines in the Yazoo Backwater Area. These declines in turn, will harm the area's remaining wetlands and exacerbate the area's already significant low flow problems (since groundwater provides some base flow in the Yazoo Backwater Area rivers, streams, and bayous).

Fourth, the project's 34 groundwater wells that will be located far outside the project area will cause even more drawdown of the already severely-depleted Mississippi Alluvial Plain aquifer. As described in detail in Section H.2 of these comments, this out-of-kind mitigation is counter-productive and was decisively rejected in a comprehensive watershed plan due to its unacceptable *adverse* impacts. The Corps ignored this watershed plan, as well as basic hydrological principles and monitoring data, in an unrealistic, uninformed, and unfounded attempt to claim mitigation credits.

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Contemporary Water Research & Education Issue 162, Pages 128-139, December 2017 (available at <https://onlinelibrary.wiley.com/doi/pdfdirect/10.1111/j.1936-704X.2017.03264.x?download=true>); 2014. Mississippi Executive Order 1341 (establishment of the Governor's Delta Sustainable Water Resources Task Force, signed by Gov. Phil Bryant, April 26, 2014) (<https://www.mdeq.ms.gov/wp-content/uploads/2018/11/View-Executive-Order-1341.pdf>); Mississippi Water Resources Research Institute, Mississippi State University (available at <https://www.wrri.msstate.edu/>); 38th Annual Mississippi Water Resources Research Conference, Session A panel discussion proceedings (available at <https://www.wrri.msstate.edu/pdf/sessionA.pdf>); 2018 annual report. Mississippi Water Resources Research Institute, Mississippi State University (available at <https://www.wrri.msstate.edu/pdf/2018annual.pdf>); Proceedings of the 37<sup>th</sup> annual Mississippi Water Resources Conference. Agricultural Water Use in the Mississippi Delta, Shane Powers, Yazoo Mississippi Delta Joint Water Management District (available at <https://www.wrri.msstate.edu/pdf/powers07.pdf>).

<sup>260</sup> Clean Water Act 404(c) Final Determination at 51.

<sup>261</sup> Ying Ouyanga, et al., *Estimating impact of forest land on groundwater recharge in a humid subtropical watershed of the Lower Mississippi River Alluvial Valley*, Journal of Hydrology: Regional Studies 26 (2019) 100631 (wetlands in the lower Yazoo River Basin provide the highest rates of groundwater recharge while agricultural lands provide the lowest rates). A copy of this study is provided at Attachment J to these comments. Michael Gratzner, et al., *Quantifying Recharge to the Mississippi River, Valley Alluvial Aquifer from Oxbow Lake-Wetland Systems*, (2017) (oxbow lake wetlands near Belzoni, MS produce "significant vertical recharge" into the Mississippi River Valley Alluvial Aquifer). Copies of both of these articles are provided with the Conservation Organizations Scoping Comments which are appended to these comments at Attachment F (the articles can be found at attachment D to the scoping comments).



The implications of Yazoo Pumps-induced groundwater declines will not stop at the borders of the Yazoo Backwater Area. To the contrary, such declines will affect all areas that rely on the upper-most aquifer underlying the Mississippi Alluvial Plain.

#### **8. The DSEIS Fails to Properly Analyze the Impacts to Fish and Wildlife, Including Listed Species**

EPA issued the 2008 veto because the Yazoo Pumps “would result in unacceptable adverse effects on fishery areas and wildlife.” Indeed, the veto “is based solely on environmental harms to fisheries and wildlife in the Yazoo Backwater Area” as “is appropriate given the structure and language of the CWA and case law.”<sup>262</sup> In its comments on the 2007 FSEIS, the Department of the Interior similarly concluded that the Yazoo Pumps “will have unacceptable adverse effects on fishery areas, including spawning and breeding areas” and “unacceptable adverse effects on wildlife, specifically to the area’s breeding and migratory birds, including landbirds, shorebirds, wading birds, and waterfowl.”<sup>263</sup>

Given these findings, it is critical that the DSEIS accurately assess the impacts of the Proposed Plan on fish and wildlife resources, but the DSEIS does not do so.

##### **a. The DSEIS Severely Underestimates the Adverse Impacts to Birds and Waterfowl**

The DSEIS’s examination of the direct, indirect, and cumulative impacts of the Yazoo Pumps on birds and waterfowl that depend on the Yazoo Backwater Area is technically deficient and scientifically unsound – a wholly unacceptable assessment given the anticipated extensive and irreversible ecological impacts associated with the Proposed Plan.

Approximately 60 percent of all North American bird species depend upon the Mississippi River basin's habitats, including 40 percent of all waterfowl and shorebirds that migrate along the Mississippi River Flyway. Located in the heart of this major continental migration corridor, the Yazoo Backwater Area provides hemispherically significant wetlands that support 257 bird species, including several species recognized as state and/or federally threatened or endangered, or as a Species of Greatest Conservation Need.<sup>264</sup>

As described in the 2008 Clean Water Act 404(c) Final Determination, adverse impacts caused by the Yazoo Pumps must be considered in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.<sup>265</sup> Stated further by the U.S. Fish and Wildlife Service (FWS) in the Fish and Wildlife Coordination Act Report prepared for the 2007 SEIS, the Yazoo Backwater Area provides the “greatest potential” for meeting breeding bird habitat restoration

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<sup>262</sup> Clean Water Act 404(c) Final Determination at 70.

<sup>263</sup> U.S. Department of the Interior Comments on the 2007 FSEIS at 7, 9.

<sup>264</sup> Clean Water Act 404(c) Final Determination Appendix 2 “Yazoo Backwater Area Faunal Species Lists”. Species of Greatest Conservation Need (SGCN) are aquatic or terrestrial animals that have been recognized by the State of Mississippi as at risk or in decline, and as such are identified in the 2015 State Wildlife Action Plan as the species most in need of conservation action.

<sup>265</sup> Clean Water Act 404(c) Final Determination at iii.



and protection needs within the LMRAV.<sup>266</sup> Therefore, the Yazoo Backwater Area represents one of the last existing and most substantial tracts of highly productive bottomland hardwood forests in the LMRAV, which provides vital foraging, nesting, breeding, and migration habitat to annually support millions of waterfowl, shorebirds, wading birds, colonial nesting waterbirds, and songbirds.

The 2020 DSEIS, however, completely fails to acknowledge or respond to any of the bird and waterfowl concerns raised in the 2008 EPA veto. In fact, the DSEIS limits its review to a qualitative—not quantitative—impact assessment for a handful of bird species, which does not serve as a comprehensive assessment of the vast abundance of birdlife that use the LMRAV and rely on the project area.<sup>267</sup> This narrow assessment stands in grave contradiction to the DSEIS’s acknowledgement that, “Lands within the Yazoo Study Area are regionally, nationally, and hemispherically important due to the habitat provided to a myriad of species.”<sup>268</sup>

The 2008 EPA veto was unequivocal in the Pumps’ harm to birds and waterfowl:

The loss of the productive shallowly flooded wetlands, especially in the spring months when the proposed pumps will typically be in operation, will impact migratory birds such as shorebirds and waterfowl as they stopover and forage in preparation for their seasonal migration. Fewer shallowly flooded wetlands will reduce foraging habitat, which will equate to reduced nutritional uptake and could result in higher mortality or reduced reproductive fitness as the birds travel the great distances between their southern wintering areas and their breeding areas in the northern U.S., Canada, and the Arctic. Breeding for many species could be adversely affected during the spring-time nesting season because foraging areas would be reduced. As a result of the reduction in flooding, adult birds will have to travel longer distances to find food, which equates to longer times away from the nest or foraging for food and may ultimately lead to higher nest mortality and lower recruitment (Appendix 4).<sup>269</sup>

Also, the EPA veto described:

500,000-1,000,000 shorebirds, migrate on a biannual basis. FWS also notes that natural springtime flooding in the area’s riverine backwater wetlands coincides with two major events in the LMRAV: 1) native bird and waterfowl migration that requires suitable and productive stopover and foraging habitats to meet migratory energy needs; and 2) breeding bird and waterfowl nesting that requires adequate nesting and foraging habitats to meet reproductive and rearing needs.<sup>270</sup>

The DSEIS blatantly ignores these concerns, concluding that the Proposed Plan will have no direct, no cumulative, and minimal indirect, adverse impacts.<sup>271</sup>

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<sup>266</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 7.

<sup>267</sup> DSEIS Appendix H at 90.

<sup>268</sup> DSEIS at 49.

<sup>269</sup> Clean Water Act 404(c) Final Determination at 57.

<sup>270</sup> Clean Water Act 404(c) Final Determination at 26.

<sup>271</sup> DSEIS at 75.



Moreover, the DSEIS Migratory Bird Appendix states that an MVK hydrologic analysis shows that the Proposed Plan would cause a loss of “up to 34,000 acres of inundated habitat including 23,500 acres of inundated floodplain forest for water- and wetland-dependent birds (e.g., herons, egrets, ibises) that utilize this habitat for foraging or breeding” in the 25% exceedance elevation.<sup>272</sup> Given that these backwater habitats support a complex array of diverse life cycle needs by hundreds of bird species, it is illogical for the DSEIS to conclude that the Proposed Plan will have no direct, no cumulative and just minimal indirect adverse impacts on bird species.

Rather, the DSEIS characterizations of the Proposed Plan’s impacts to birds and waterfowl lack objective, peer-reviewed analyses and robust science. For example, the DSEIS concludes that except for the pondberry, there is a low probability that any other ESA listed species occur in the project area; this assertion is in direct contradiction to information contained in the DSEIS and is not accompanied by source references used to make those occurrence determinations.<sup>273</sup>

Audubon’s eBird abundance analysis, presented in greater detail below, scientifically substantiates the Proposed Plan’s threat to 180 migratory landbird and waterbird species, finding that over 10 million birds and more than 18 million birds use the Yazoo Backwater Area annually during spring and fall migration, respectively. Additionally, Audubon’s analysis of 17 overwintering waterfowl species found that over 6.3 million use of the Yazoo Backwater Area from December-February.

Audubon’s analysis and findings reinforce the concern that the DSEIS is sloppy and downplays the Proposed Plan’s consequences to birds and waterfowl. Likely, the proposed Pumps would be operated during the winter and spring months when the impact to migratory birds would be greatest; the loss of shallowly flooded wetlands would significantly reduce the stopover and forage habitat birds rely on to fuel their seasonal migration. Resident waterfowl and other bird species would be expected to experience similar habitat losses and associated resulting impacts.

The DSEIS asserts that most of 29 bird species it analyzed—an extremely limited species sample—“should experience few negative impacts with implementation of the Updated Recommended Plan”.<sup>274</sup> Although the DSEIS does acknowledge that bottomland hardwood wetlands located above elevation 87 feet “will likely experience changes in structure and function due to altered hydrologic regimes from the Pumps’ operation”<sup>275</sup>, its discussion on the resulting impacts to birdlife is limited to a single paragraph that acknowledges wading birds and migratory shorebirds are not directly addressed. The DSEIS’ qualitative assessment of impacts to birdlife by the Proposed Plan is simply unacceptable.

In reviewing the 2007 FSEIS and CWA 404(c) Proposed Determination, the FWS found that the Yazoo Pumps, “would reduce flooding on all four NWRs by 59 percent (6,695 acres) within the 2- to 5-year floodplain – significantly reducing the extent of habitat for migratory birds and the capability of these NWRs to achieve the purpose for which they were congressionally established.”<sup>276</sup> These multiple natural resource designations bestowed on lands in the Yazoo Backwater reinforce the vast array of ecologic benefits these habitats provide, and punctuate just how widespread and far reaching the

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<sup>272</sup> DSEIS, Appendix H (in the Migratory Bird section of this Appendix) at 6.

<sup>273</sup> DSEIS Appendix H at 9.

<sup>274</sup> DSEIS Appendix H Migratory Birds Appendix at 16.

<sup>275</sup> DSEIS Appendix H Migratory Birds Appendix at 17.

<sup>276</sup> Clean Water Act 404(c) Final Determination at 64.



Pumps' environmental threats pose to the Lower Mississippi Alluvial Valley and the Mississippi River Flyway.

In the veto EPA acknowledged that:

The proposed project would reduce the extent of flooding within wetlands in the 2- to 5-year floodplain potentially from January through June. The reductions to late winter and spring flooding would result in significant adverse impacts to those birds which not only utilize the Yazoo Basin, but are dependent upon backwater flooding during these periods....The reduction in the extent and duration of the spring flood pulse would accelerate the decline of many bird species that depend upon the wetland habitats of the lower Yazoo River (Appendix 4).<sup>277</sup>

The 2020 DSEIS proposal reinforces the reality of landscape-scale hydrologic alterations because operation of the Yazoo Pumps would not only be limited to large flood events. In addition to the Pumps' direct environmental impacts from its construction and operations, secondary and cumulative alterations and subsequent loss of habitats will also occur in the Lower Mississippi River Delta in areas located outside the Yazoo Backwater Area, for which waterfowl, shorebirds, wading birds, colonial nesting water birds, and songbirds depend on for foraging, nesting, breeding, and migration.

The many thousands of wetland acres that will be drained by the Yazoo Pumps include a myriad of state and/or federally managed refuge, forest, and wildlife management areas, many of which are recognized as Important Bird Areas (IBAs) for resident and migratory birds and waterfowl. These properties include Delta National Forest, Panther Swamp and Yazoo National Wildlife Refuges, and Mahannah Wildlife Management Area, as well as Eagle Lake in Warren County.<sup>278</sup>

Furthermore, the DSEIS's analyses for birds and waterfowl are incredibly limited and anecdotal, and do not properly account for the different life-cycle requirements of the many species that utilize the project area for the purposes of foraging, nesting, breeding, and/or migration periods. Audubon's eBird abundance analysis, discussed below, highlights several bird species to better demonstrate the vital role wetlands and flood frequency play to support the health and survival of many millions of birds that use the project area each year. Rather than limiting its assessment to a few bird species, the DSEIS should select a wider, more representative sample of species that have different habitat needs at different times of the year and include any species that has outlier habitat needs, particularly for species of concern.

A clear example of these deficiencies is the DSEIS's assessment on migratory birds, which describes the only field investigation to collect data on avian species in the Yazoo Backwater Area was done opportunistically over a 2-week period in mid-July.<sup>279</sup> Three wildlife biologists collected data on visual and aural observations at 53 HEP sampling sites along with incidental detections that occurred while walking or driving between the sampling points. The numerous deficiencies with the scenario described include:

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<sup>277</sup> Clean Water Act Final (404) Determination at 58.

<sup>278</sup> An Important Bird Area (IBA) is an area that has been identified using an internationally agreed to set of criteria as being globally important for the conservation of bird populations. National Audubon Society administers this program in the United States. Source: National Audubon Society website at <https://www.audubon.org/important-bird-areas/state/mississippi> (last visited November 16, 2020).

<sup>279</sup> DSEIS Appendix H Migratory Birds Appendix at 89.



- Other than “well-versed in visual and aural detections of birds”, no supporting documentation was provided on the level of birding expertise (formal or informal) or ornithological experience of any of the three wildlife biologists.
- The avian field observations were collected in an ancillary, “opportunistic” fashion that were coordinated around 53 sampling points whose locations were selected for other field purposes. This approach is wholly inadequate and distorted given the global importance of the Yazoo Backwater habitats to supporting birdlife. Rather, a robust bird survey must be designed and executed by professionals trained in bird science and the survey must include a representative sample of habitats and conservation areas (i.e. state and federal lands, conservation-enrolled properties) throughout the backwater as well as the broader LMRAV region so as to provide a comprehensive picture of bird use and movement in the ecoregion.
- The window to collect bird observations was limited to a single 2-week window in mid-July. This highly selective, narrow period in mid-summer is completely nonsensical as it misses the spring and fall migrations seasons, as well as the overwintering season. Importantly, it also misses the peak of the breeding season for many migratory songbirds, and took place during the cessation of breeding when songbirds are relatively quiet and hard to detect. The DSEIS’s approach is completely inappropriate and fails to apply scientific method and analysis to comprehensively assess the Pumps’ impacts to birdlife.

A related deficiency includes several instances where the DSEIS implies data sources are more up-to-date than they really are. This is particularly in the case of citations that appear current because of re-publication by The Cornell Lab of Ornithology in 2020, but are actually outdated by 20 years or more. In the Wood Stork discussion, for example, the “Coulter et al. 2020” reference was written in 1999, and the Least Tern discussion reference to “Thompson et al. 2020” was last updated in 1997.<sup>280</sup> In both cases, more recent peer-reviewed published data contradict several of the statements and assumptions around these species’ population sizes, distributions, and migratory pathways.

Another example of how the DSEIS minimizes the Pumps’ impacts to waterfowl can be found in its assessment of Duck Use Days (DUDs). The estimated loss of 1.3 million DUDs due to the Proposed Plan would represent a 12.4% loss in the total DUDs annually, a substantial sum that indicates significant harm to overwintering waterfowl population, rather than the DSEIS’ conclusion that minimal or non-existent adverse impacts.

Notably, the 2020 DUD analysis is limited to just Mallards (DSEIS Appendix F-7: Waterfowl). Given the abundance and diversity of winter waterfowl species outlined by Audubon’s analysis below, the DUD analysis should be expanded to include other species with different life-cycle needs.

Also, in addition to the major shortcomings of the DSEIS’s proposed mitigation discussed in Section H of these comments, the compensatory benefits for wintering waterfowl will take 20 years to begin accruing and would continue for another 30 years.<sup>281</sup> This would not only negatively impact recreational and economic opportunities around waterfowl hunting for local businesses and landowners, but also this timeline extends well beyond the realistic planning horizons of natural resource agencies and public-

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<sup>280</sup> See DSEIS Appendix H at 13 and 20, respectively.

<sup>281</sup> DSEIS Appendix F-7 at 13.



private conservation initiatives. Cropland or habitat conversion to productive, healthy bottomland hardwood forest habitat is a significant undertaking and requires active management and monitoring, both of which are not mentioned.

(i) Summary of the eBird Abundance Model Analysis

Audubon has developed an eBird abundance model summary analysis (“abundance analysis”) for 180 species of migratory birds found in the region using data from the Cornell Lab of Ornithology and the Partners in Flight Population Estimates Database from Bird Conservancy of the Rockies.<sup>282, 283</sup> Although these data sources also were used in the DSEIS’ assessment on migratory birds (DSEIS at Appendix H Migratory Birds Appendix at 5), an important difference is that much of the DSEIS’s migratory bird assessment used eBird data that is only based on raw observational data, not accounting for incomplete sampling and other survey biases.

This approach is substantially less meaningful than Audubon’s approach in using modeled bird-habitat relationships to estimate relative abundance, which was then compared to continental population size estimates. Specifically, Audubon’s abundance analysis was developed to better evaluate and quantify the population-level importance of a geographic location for a bird species during the fall/spring migration, and/or overwintering seasons, so as to strengthen the effectiveness of bird conservation efforts. This model analysis has been peer-reviewed, and a summary of Audubon’s methodology is provided in Figure 2, below.<sup>284</sup>

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<sup>282</sup> Fink, D., T. Auer, A. Johnston, M. Strimas-Mackey, O. Robinson, S. Ligocki, B. Petersen, C. Wood, I. Davies, B. Sullivan, M. Iliff, S. Kelling. 2020. eBird Status and Trends, Data Version: 2018; Released: 2020. Cornell Lab of Ornithology, Ithaca, New York (available at <https://doi.org/10.2173/ebirdst.2018>).

<sup>283</sup> Will, T., J.C. Stanton, K.V. Rosenberg, A.O. Panjabi, A.F. Camfield, A.E. Shaw, W.E. Thogmartin, and P.J. Blancher. 2020. Handbook to the Partners in Flight Population Estimates Database, Version 3.1. PIF Technical Series No 7.1 (available at [pif.birdconservancy.org/popest.handbook.pdf](http://pif.birdconservancy.org/popest.handbook.pdf)).

<sup>284</sup> DeLuca, W, Meehan, T, Seavy, M, Jones, A, Pitt, J, Deppe, J, & Wilsey, C, ‘The Colorado River Delta and California’s Central Valley are critical for many migrating North American landbirds’, *The Condor: Ornithological Applications* (In press).



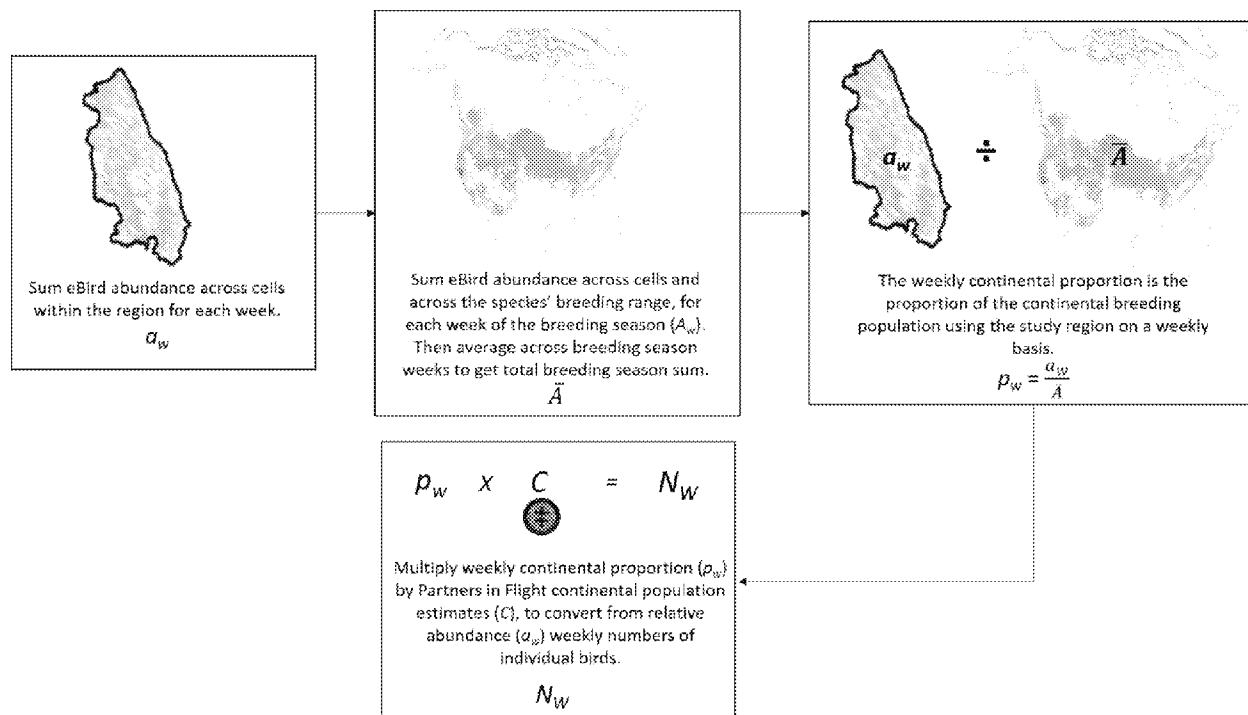


Figure 2, Illustration of the methodology developed by Audubon for its eBird abundance analysis, which was first completed for the Colorado River Delta and California's Central Valley. This serves as a graphical and mathematical description of the process Audubon used to go from the weekly eBird abundance raster surface in the Sacramento study region to an estimate of total number of individual birds using the region for a given week.

Audubon's abundance analysis was used to develop an estimate of annual spring migration (April-May) and fall migration (August-October) landbird and waterbird use of the Yazoo Backwater Area, as well as estimated annual overwintering waterfowl use (December-February). Audubon's findings substantially reinforce long-standing assessments made by natural resource agencies, scientists, conservation groups, and many others that the Yazoo Backwater Area is a major ecologic lynchpin of the Lower Mississippi River Alluvial Valley because it provides hemispherically significant habitat for many migrating landbirds and waterbirds, and for overwintering waterfowl.

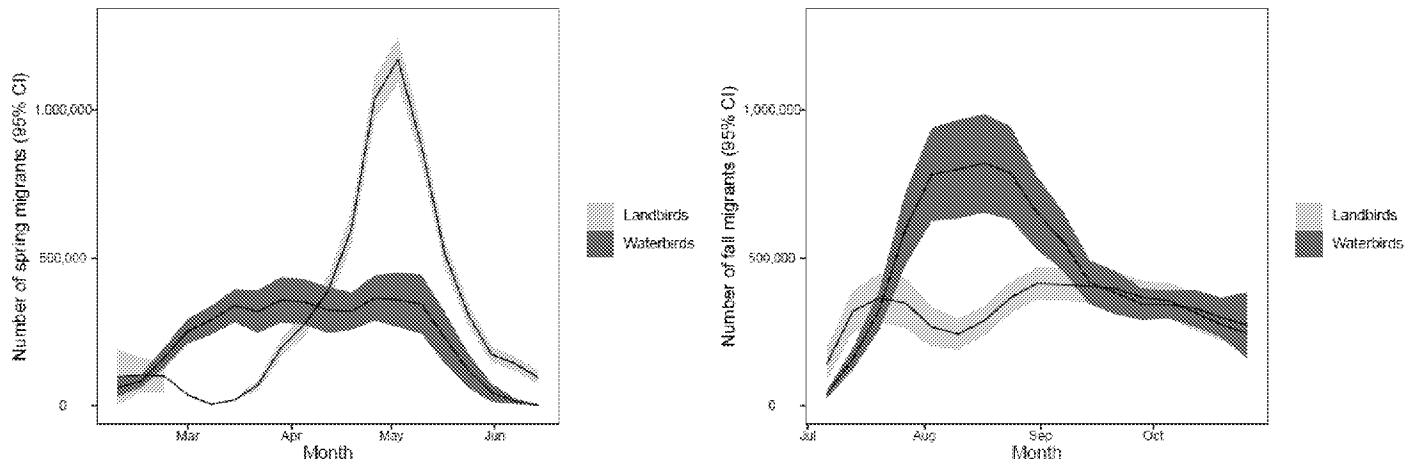
The 2008 veto showcased the rich biodiversity of the region, which includes identifying 257 bird species known to occur in Yazoo Backwater Area.<sup>285</sup> Audubon's analysis focused on 180 landbird and waterbird species with a reasonable potential to regularly use the Yazoo Backwater Area during spring or fall migration, and that would be reasonably represented by the eBird models, specifically 116 species of landbirds and 64 species of waterbirds.

The analysis found that over 10 million birds (~5.9 million landbirds and ~4.3 million waterbirds) use the Yazoo Backwater Area during spring migration, and more than 18 million birds (~9.1 million landbirds and ~9.6 million waterbirds) use Yazoo Backwater Area during fall migration. The finding that habitats in the project area annually support an estimated 29 million migrating birds unequivocally demonstrates the population-level importance of the Yazoo Backwater Area for many migrating landbirds and waterbirds.

<sup>285</sup> Clean Water Act 404(c) Final Determination Appendix 2 "Yazoo Backwater Area Faunal Species Lists".



The line graphs in Figure 3 below show weekly bird migration during spring and fall. The lines represent the estimated number of birds in each guild (i.e., landbirds, waterbirds) using the Yazoo Backwater Area in each week of each season, and the colored ribbon represents a 95% confidence intervals around those estimates. During spring migration, the results demonstrate that waterbirds pass through relatively consistently between March and mid-May, whereas landbirds peak in early May. During fall migration, the analysis found that waterbirds tended to peak early, whereas landbird numbers were more stable over time.



*Figure 3, Line graphs showing the estimated number of landbirds and waterbirds using the Yazoo Backwater Area in each week of the spring and fall migration seasons. The colored ribbon in Figure 3 represents a 95% confidence intervals around those estimates. Source: The findings were based on analyses by the National Audubon Society, using data from eBird Status & Trends from the Cornell Lab of Ornithology and Partners in Flight Population Estimates Database from Bird Conservancy of the Rockies*

The analysis illustrates the total number landbird and waterbird species within each of four categories to summarize the proportion of species' North American breeding population that use the Yazoo Backwater Area during spring and fall migrations (see Figures 4 and 5, below). To provide population-level importance of the Yazoo Backwater Area to migrating species, Audubon used BirdLife International's Global Important Bird Area criteria A4, which allows a site to qualify as globally significant if it regularly holds congregations of  $\geq 1\%$  of the global population of one or more species. Any species in either the low, moderate, or high categories meets this  $\geq 1\%$  criterion. The delineation of the four categories are as follows: **below 1%** – greater than zero but less than 1% of the species population uses the site; **low** – the percent of species populations that use the site is  $\geq 1\%$  but within the bottom third of the data range; **moderate** – the percent of species populations that use the site is in the middle third of the data range; **high** – the percent of species populations that use the site is in the upper third of the data range.



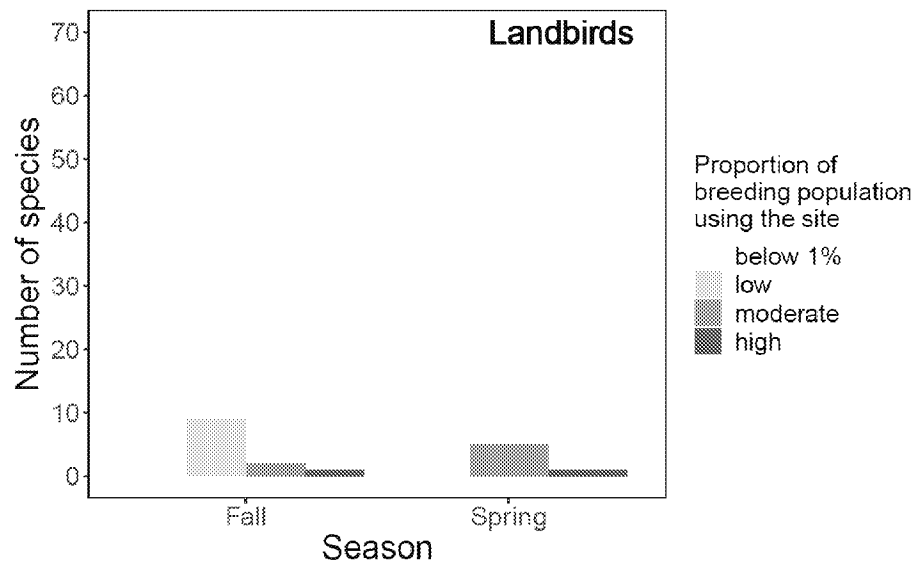


Figure 4, The proportion of the total North American population of landbirds that migrate through the Yazoo Backwater Area during fall and spring. Source: The findings were based on analyses by the National Audubon Society, using data from *eBird Status & Trends* from the *Cornell Lab of Ornithology* and *Partners in Flight Population Estimates Database* from *Bird Conservancy of the Rockies*

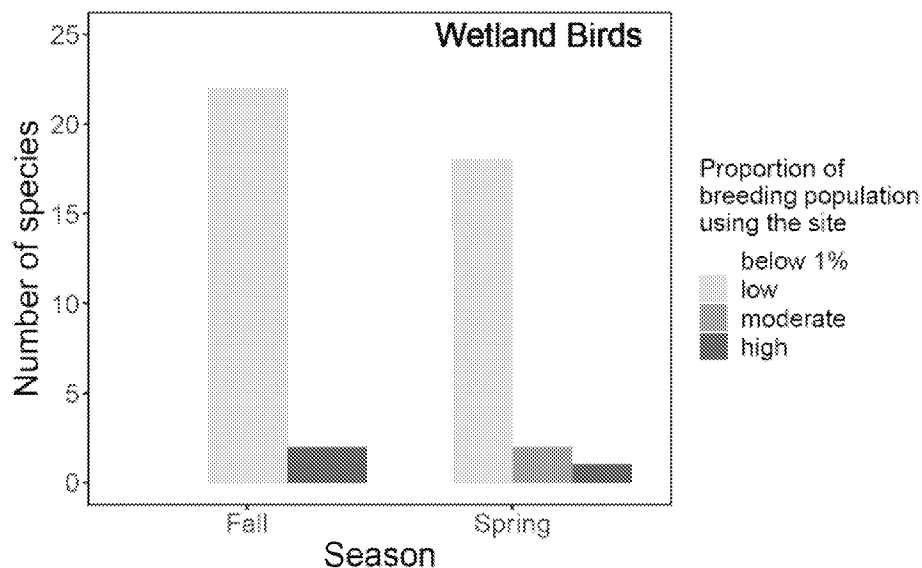


Figure 5, The proportion of the total North American population of waterbirds that migrate through the Yazoo Backwater Area during fall and spring. Source: The findings were based on analyses by the National Audubon Society, using data from *eBird Status & Trends* from the *Cornell Lab of Ornithology* and *Partners in Flight Population Estimates Database* from *Bird Conservancy of the Rockies*

In comparing these results to the Species of Greatest Conservation Need (SGCN) identified in Mississippi's State Wildlife Action Plan<sup>286</sup>, there were nine SGCN species that trigger the  $\geq 1\%$  continental population threshold for either spring or fall migration through the Yazoo Backwater Area. These were:

<sup>286</sup> Mississippi Museum of Natural Science (2014). *Endangered Species of Mississippi*. Mississippi Department of Wildlife, Fisheries, & Parks, Mississippi Museum of Natural Science, Jackson, MS (available at [https://www.mdwfp.com/media/3231/endangered\\_species\\_of\\_mississippi.pdf](https://www.mdwfp.com/media/3231/endangered_species_of_mississippi.pdf)) (visited June 10, 2020).



- Dunlin (spring)
- Interior Least Tern (fall, Endangered Species Act listed)
- Lesser Scaup (spring)
- Peregrine Falcon (fall)
- Prothonotary Warbler (spring) (see Figure 6, below)
- Snowy Egret (fall)
- Tricolored Heron (fall)
- Western Sandpiper (fall)
- Yellow-crowned Night-Heron (spring and fall)

For example, the analysis found that nearly 21,000 Prothonotary Warblers use the Yazoo Backwater Area during spring migration. Upon comparing this estimate of Prothonotary Warbler numbers during peak spring migration to the estimate of what proportion of the species' global population that represents; the Yazoo Backwater Area supports almost 1% of the species' total global population.

The Prothonotary Warbler is one of the 29 bird species reviewed in the DSEIS (DSEIS Appendix H Migratory Birds Appendix at 97; note the species initially was misspelled as "Prothonary"). The life-cycle of this cavity-nesting species is highly dependent on rivers and bottomland hardwood forests, resulting in it being common throughout the Mississippi River Flyway.<sup>287</sup> However, the species is experiencing a significant population decline because of the loss of forested wetlands in the United States and mangroves on its wintering grounds.

The DSEIS fails to provide a substantive, science-based discussion of how the Proposed Plan will impact the species and the DSEIS concludes that more detailed modeling is needed.<sup>288</sup> This is bookended by an uncorroborated assertion that the loss of up to 23,500 acres of forested wetland habitat will be offset by "unrealized habitat gain in bottomland hardwoods". Audubon's findings clearly demonstrate that the Yazoo Backwater Area provides ecologically significant wetland habitat that is vital to the global population health of the Prothonotary Warblers. Wetland losses due to the Yazoo Pumps will have a far-reaching and lasting impact on the viability of this species far beyond the DSEIS's incomplete, lackluster assessment.

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<sup>287</sup> Cornell Lab of Ornithology, All About Birds website, [https://www.allaboutbirds.org/guide/Prothonotary\\_Warbler/overview](https://www.allaboutbirds.org/guide/Prothonotary_Warbler/overview) (visited November 18, 2020).

<sup>288</sup> DSEIS Appendix H Migratory Birds Appendix at 13.



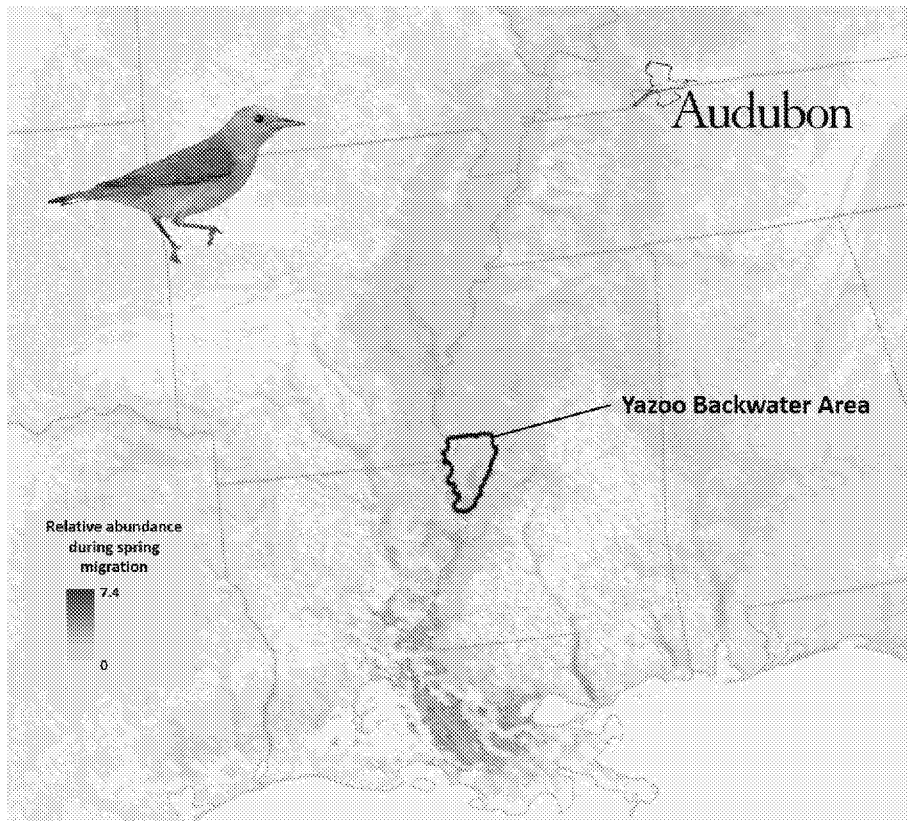


Figure 6, This map shows the relative abundance of Prothonotary Warblers using the Yazoo Backwater Area across the entire spring migration season. Up to nearly 21,000 Prothonotary Warblers use the Yazoo Backwater Area during spring migration. This represents almost 1% of the species' total global population. Source: The findings were based on analyses by the National Audubon Society, using data from [eBird Status & Trends /Cornell Lab of Ornithology](#) and [Partners in Flight Population Estimates Database/Bird Conservancy of the Rockies](#). Photo by Lorraine Minns/Audubon Photography Awards

Also, the analysis identified 12 bird species that exceeded the 10% continental population threshold for spring and/or fall migration through the Yazoo Backwater Area:

- American Golden-Plover (spring)
- Blue-winged Teal (spring and fall)
- Greater White-fronted Goose (fall)
- Least Sandpiper (spring and fall)
- Lesser Yellowlegs (spring and fall)
- Long-billed Dowitcher (fall)
- Pectoral Sandpiper (spring and fall) (see Figure 7, below)
- Roseate Spoonbill (fall)
- Semipalmated Sandpiper (fall)
- Snowy Egret (fall)
- Stilt Sandpiper (spring and fall)
- White-rumped Sandpiper (spring)

EPA has acknowledged that, "If the frequency of spring flooding in the Yazoo Backwater Area is significantly reduced, then the loss of this seasonal habitat would result in lower survival rates, and



therefore, reduced northward shorebird migrations.”<sup>289</sup> EPA highlighted the importance of the project area’s shallowly flooded wetlands as prime spring migration stopover habitat, especially for Pectoral Sandpipers. This shorebird often nests in the Arctic Tundra and winters in southern South America, resulting in a round-trip migration of nearly 19,000 miles every year.<sup>290</sup> The population of Pectoral Sandpipers is in decline and the species is on the Partners in Flight Yellow Watch List.

Audubon’s abundance analysis found that significant numbers of Pectoral Sandpipers migrate through the Yazoo Backwater Area annually, especially in the fall. The analysis found that up to nearly 500,000 Pectoral Sandpipers use the project area during one week of peak fall migration, or about 30% of the species’ total global population. Audubon’s findings on Pectoral Sandpipers profoundly demonstrate the hemispheric importance of the Yazoo Backwater habitats to the global population health of this species, thereby reinforcing the serious threat the Yazoo Pumps pose to this and many other migrating species.

Comparatively, the DSEIS offers no quantitative assessment of the Proposed Plan on shorebirds or migratory species. An example of the DSEIS’s short comings on this matter is demonstrated through its claim about a few migratory shorebird species it considered; namely that, “Most of these species could potentially occur for brief periods during the fall and/or spring migration seasons....”<sup>291</sup> In contrast, Audubon’s spring/fall migration analyses found the project area supports sizeable global populations of several species included on the DSEIS’s finite list, specifically American Golden-Plover (spring), Semipalmated Sandpiper (fall), Dunlin (spring), Lesser Yellowlegs (spring and fall) and Interior Least Tern (fall; Endangered Species Act listed).

Also, the DSEIS downplays the likelihood that a handful of migratory shorebird species use the project area and is generally dismissive of the impacts constructing and operating the Pumps will have on various backwater habitats during migration seasons.<sup>292</sup> The DSEIS suggests that the Pumps’ operation may significantly reduce shallowly flooded habitats that would impact migratory species, but minimizes the concern by rationalizing some flooded acreage would still exist and mitigation could be possible. The DSEIS claims do not track with those of Audubon’s peer-reviewed abundance analysis nor the concerns raised in the 2008 Final Determination.

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<sup>289</sup> Clean Water Act 404(c) Final Determination at 58.

<sup>290</sup> Cornell Lab of Ornithology, All About Birds website, [https://www.allaboutbirds.org/guide/Pectoral\\_Sandpiper/overview](https://www.allaboutbirds.org/guide/Pectoral_Sandpiper/overview) (visited November 18, 2020).

<sup>291</sup> DSEIS Appendix H Migratory Birds Appendix at 8.

<sup>292</sup> DSEIS Appendix H Migratory Birds Appendix at 8.



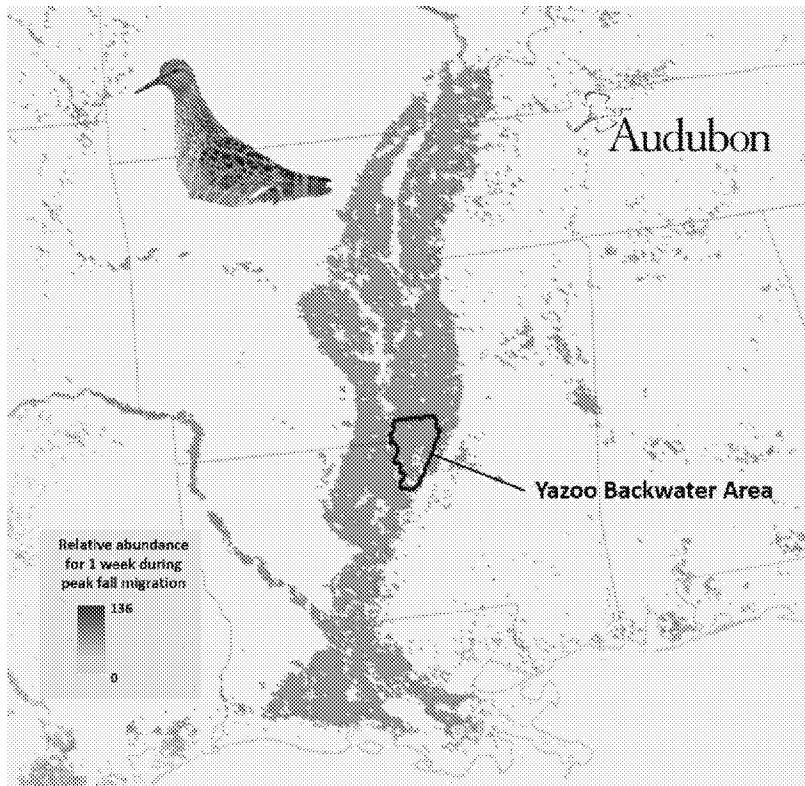


Figure 7, This map shows an example week during peak fall migration for Pectoral Sandpipers using the Yazoo Backwater Area. Up to nearly 500,000 Pectoral Sandpipers use the Yazoo Backwater Area during 1 week of peak fall migration. The Yazoo Backwater was found to support almost 30% of their global population. Source: The findings were based on analyses by the National Audubon Society, using data from [eBird Status & Trends/Cornell Lab of Ornithology](#) and [Partners in Flight Population Estimates Database/Bird Conservancy of the Rockies](#). Photo by Jamie Lyons/Audubon Photography Awards

Additionally, Audubon performed an overwintering waterfowl analysis to determine 17 species' use of the Yazoo Backwater Area during the period of December-February. The results found more than 6.3 million of these 17 waterfowl species<sup>293</sup> were estimated to use the area during the winter (see Figure 8, below). This represents 8% of their total North American population with the most notable use by Greater White-fronted Geese and Snow Geese, at 17.6% and 32.1%, respectively, of their North American population (see Figures 9 and 10, below).

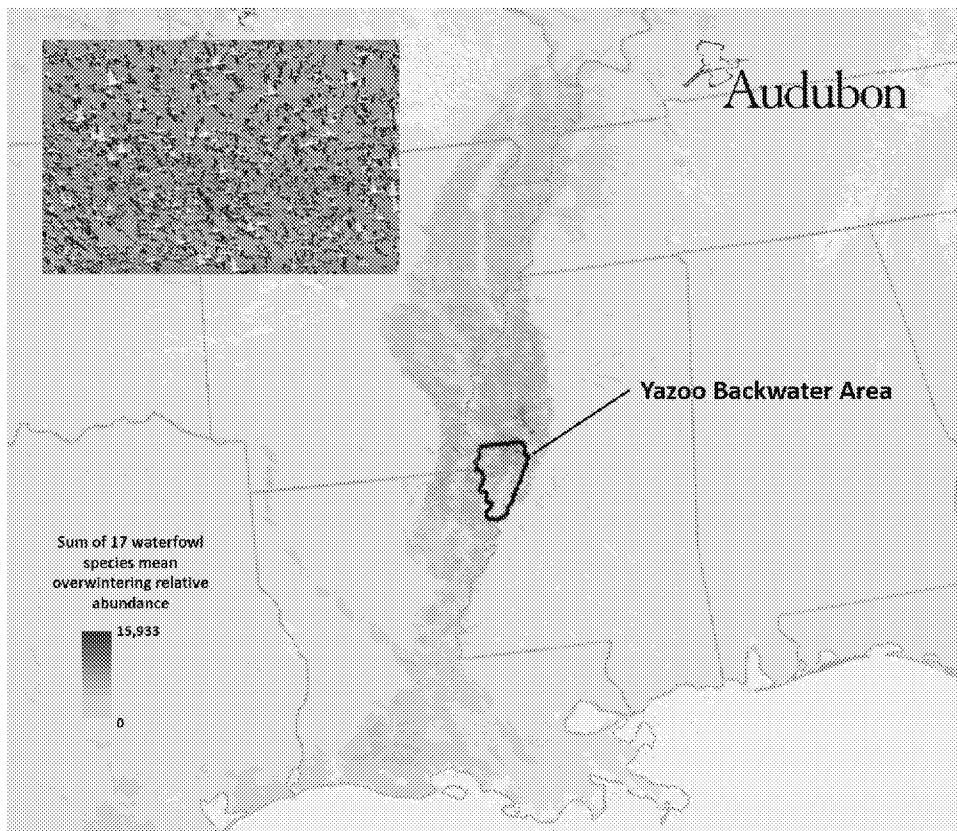
Applying BirdLife International's Global Important Bird Area criteria A4 discussed earlier, 7 of the 17 species modeled were found to meet or exceed the  $\geq 1\%$  continental population threshold for overwintering in the Yazoo Backwater Area:

- Gadwall
- Greater White-fronted Goose (see Figure 9, below)
- Green-winged Teal
- Mallard (see Figure 11, below)

<sup>293</sup> The 17 waterfowl species modeled were American Wigeon, Blue-winged Teal, Bufflehead, Canada Goose, Canvasback, Gadwall, Greater White-fronted Goose, Green-winged Teal, Hooded Merganser, Lesser Scaup, Mallard, Northern Pintail, Northern Shoveler, Ring-necked Duck, Ruddy Duck, Snow Goose, and Wood Duck.



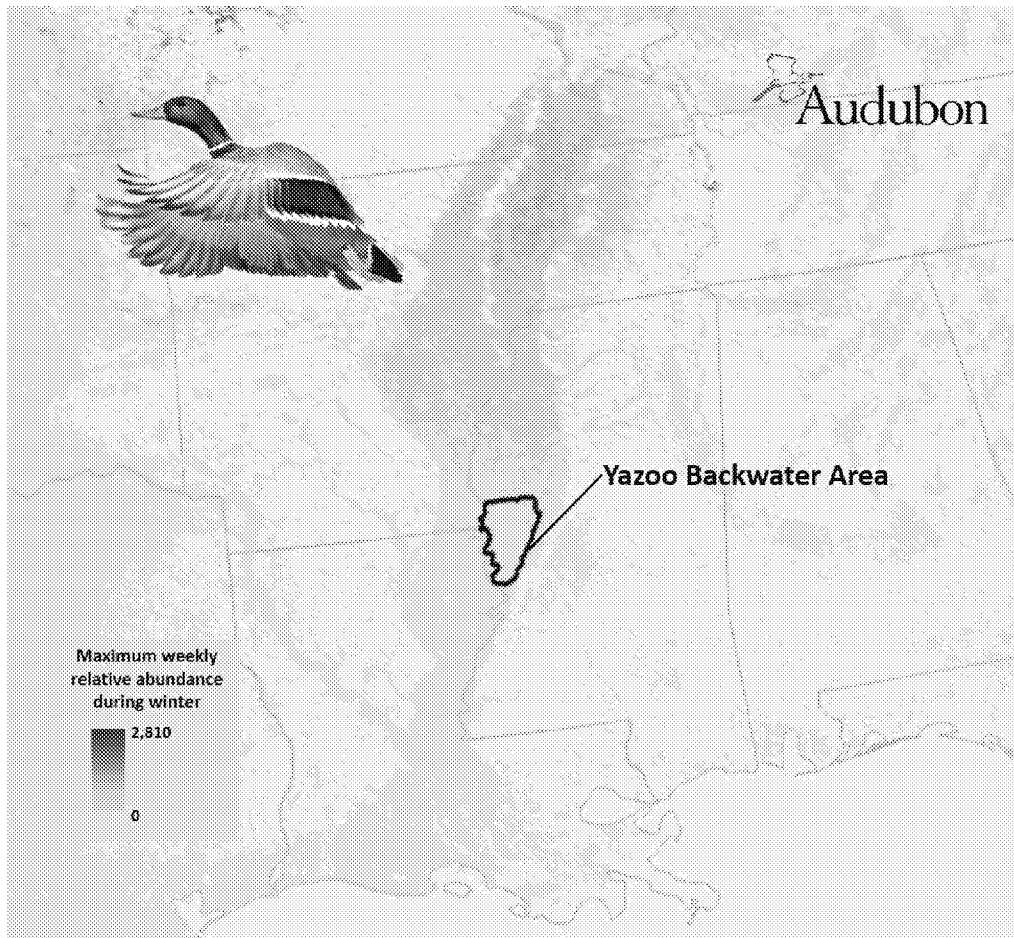
- Northern Shoveler
- Short-billed Dowitcher
- Snow Goose (see Figure 10, below)



*Figure 8, This map shows the total relative abundance of 17 waterfowl species using the Yazoo Backwater Area from December-February. Annually, more than 6.3 million of these species were estimated to overwinter in the area. Source: The findings were based on analyses by the National Audubon Society, using data from [eBird Status & Trends /Cornell Lab of Ornithology and Partners in Flight Population Estimates Database/Bird Conservancy of the Rockies](#). Photo credit: Walker Golder / National Audubon Society*

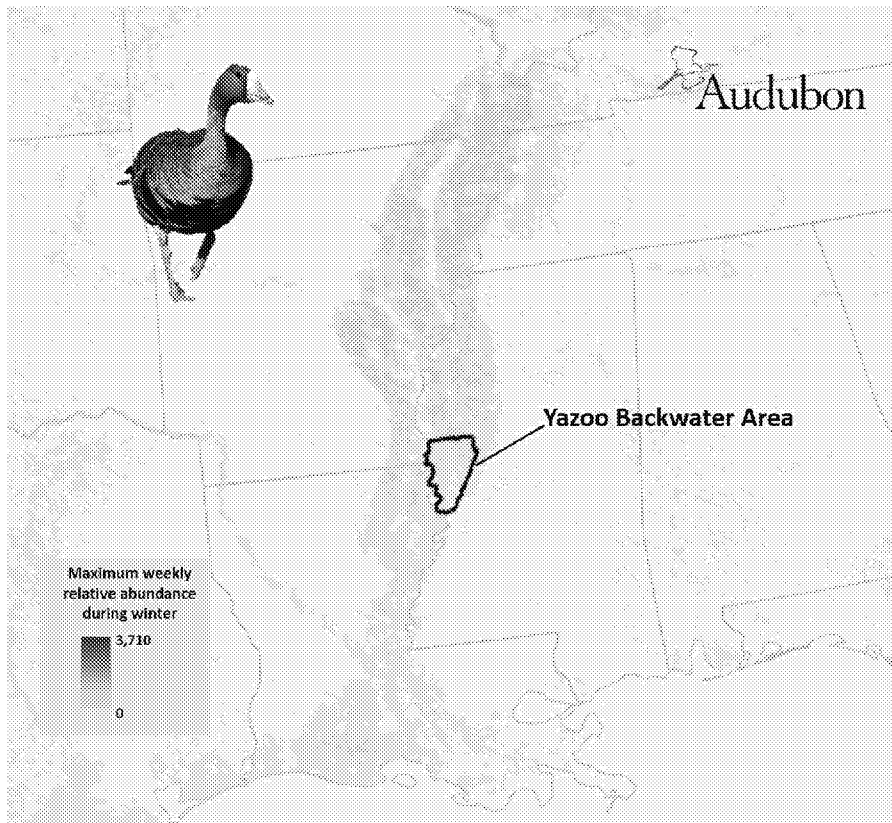
These waterfowl abundance results reinforce the significance of the Yazoo Backwater Area as a key ecologic lynchpin of the LMRAV, particularly in providing important wintering habitat for waterfowl. Audubon's analysis found that nearly 137,000 Mallards overwinter in the project area, or 1.2% of their global population, and six other species modeled also met or exceeded the  $\geq 1\%$  continental population threshold for overwintering in the Yazoo Backwater Area (see Figure 11, below).





*Figure 11, This map shows the maximum weekly relative abundance of Mallards using the Yazoo Backwater Area from December-February. Nearly 137,000 Mallards were estimated to overwinter in the area, which represents over 1.2% of their global population. Source: The findings were based on analyses by the National Audubon Society, using data from eBird Status & Trends /Cornell Lab of Ornithology and Partners in Flight Population Estimates Database/Bird Conservancy of the Rockies. Photo credit: Robert Bunch / Audubon Photography Awards*





*Figure 9, This map shows the maximum weekly relative abundance of Greater White-fronted Geese using the Yazoo Backwater Area from December-February. Over 600,000 Greater White-fronted Geese were estimated to overwinter in the area, which represents 17.6% of their global population. Source: The findings were based on analyses by the National Audubon Society, using data from eBird Status & Trends / Cornell Lab of Ornithology and Partners in Flight Population Estimates Database / Bird Conservancy of the Rockies. Photo credit: Lou Orr/Great Backyard Bird Count*



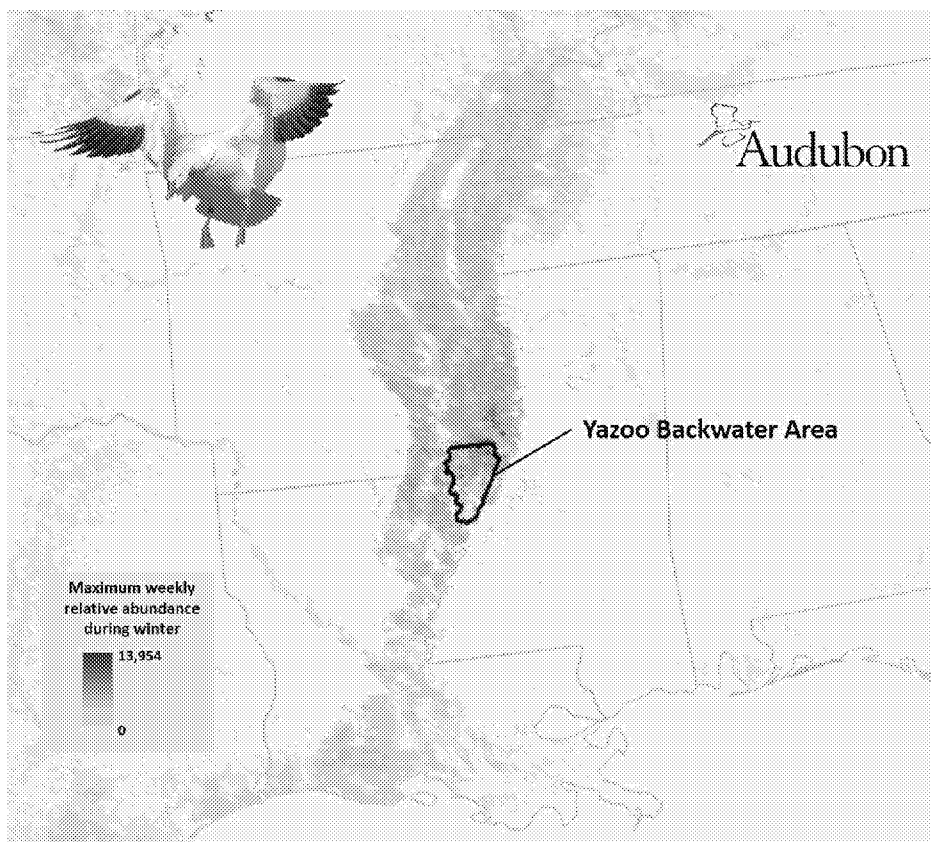


Figure 10, This map shows the maximum weekly relative abundance of Snow Geese using the Yazoo Backwater Area from December-February. Nearly 5 million Snow Geese were estimated to overwinter in the area, which represents over 32% of their global population. Source: The findings were based on analyses by the National Audubon Society, using data from *eBird Status & Trends* /Cornell Lab of Ornithology and *Partners in Flight Population Estimates Database* /Bird Conservancy of the Rockies. Photo credit: Jamie Lyons / Audubon Photography Awards

(ii) Newly Funded Migratory Bird Project Demonstrates Widespread Interest in Habitat Conservation in the Yazoo Backwater Area and Beyond

Finally, the Mississippi Department of Environmental Quality recently announced a project, “Migratory Bird Habitat Creation in the Lower Mississippi River Valley”<sup>294</sup>, to be funded through the National Fish and Wildlife Foundation’s (NFWF) Gulf Environmental Benefit Fund as part of the state’s recovery to the 2010 Deepwater Horizon oil disaster. The goal of the \$4.55 million project is to create and enhance over 7,600 acres of migratory bird habitat in the Lower Mississippi River Valley to benefit waterfowl, shorebirds, and wading birds. This proposal focuses on public lands, namely state-managed Wildlife Management Areas and National Wildlife Refuges, which will serve to complement a similar NFWF-funded project from years ago that focused on private lands located in the same geography. The proposal will benefit public lands in seven counties, five of which are in the Yazoo Backwater, namely Humphreys, Issaquena, Sharkey, Warren, and Yazoo (see Figure 12, below). This effort demonstrates there is widespread, sustained interest to direct further investments in the habitat conservation,

<sup>294</sup> Mississippi Department of Environmental Quality, *Migratory Bird Habitat Creation in the Lower Mississippi River Valley*, Accessed from [www.restore.ms](http://www.restore.ms) on November 16, 2020 (available at <https://www.mdeg.ms.gov/wp-content/uploads/2020/11/NFWF-Migratory-Bird-Habitat-Creation-in-the-Lower-Mississippi-River-Valley-2020.pdf>).




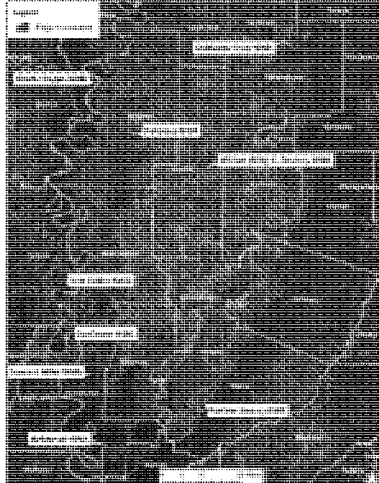
2020 NEW PROJECT

2020 NFWF-GEBF

- Phase 1 investment in private wetland reserve program to restore migratory bird habitat
- This Proposal will Fund Phase 2
- Focuses on public land: Wildlife Management Areas with MDWFP & National Wildlife Refuges with USFWS

Project Partners: Ducks Unlimited and Delta Wildlife

Project Cost: \$4.3 million



In summary, the DSEIS fundamentally fails to evaluate all direct, indirect, and cumulative environmental impacts to birds and waterfowl that would be caused by the Proposed Plan, and vastly understates the true scope of the project's impacts. Notably, the Resilience Alternative proposed by the Conservation Organizations would deliver co-benefits for birds and their habitats, while providing meaningful flood relief for communities.

The Yazoo Backwater Area contains a highly productive floodplain fisheries sustained by a network of riverine backwater wetlands.<sup>295</sup> The Proposed Plan would significantly degrade this ecosystem by eliminating critical spawning habitat, degrading rearing habitat, and impairing aquatic food webs. Rather than analyzing these far-reaching impacts, however, the DSEIS instead tries to ignore the problem by severely containing its analysis to only a fraction of a fraction of the Proposed Plan's impacts. Even then, the DSEIS relies on a series of unfounded and arbitrary moves to obscure, mask, and ultimately disclaim the impacts of the Proposed Plan. This self-serving analysis is unrealistic, contrary to the science, and does not withstand scrutiny.

<sup>295</sup> Clean Water Act 404(c) Final Determination at 34.

<sup>296</sup> Clean Water Act 404(c) Final Determination at 34.

297 *Id.*



for at least 8 consecutive days from March to May.<sup>298</sup> These depth and timing requirements are critical. For example, “if the water recedes too rapidly off the floodplain, organic matter, nutrients, and newly hatched aquatic organisms may be carried into the river instead of remaining in the floodplain and permanent backwaters.”<sup>299</sup> Many fish species also rely on the floodplain to provide rearing habitat.<sup>300</sup> For example, extended periods of shallow inundation in hardwood and other vegetated areas provide critical nursery habitat for growth and escape from predators. Accordingly, any reduction in extent or duration of inundation of flooded bottomland hardwood wetlands would reduce the fish productive capacity of the wetland.<sup>301</sup>

The construction and operation of the proposed Pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated.<sup>302</sup> These changes would significantly degrade the aquatic ecosystem, as underscored by EPA and FWS:

Reduction in access to the floodplain, as a result of the project, would result in decreased fishery production through loss of physical spawning habitat, loss of spawning opportunity (i.e., adequate period of time when habitat is available) or reduced fecundity and/or physiological condition resulting from poorer nutrition (Brunson, 1998).<sup>303</sup>

EPA also criticized the 2007 FSEIS due to its severe underestimate of the Yazoo Pumps’ impacts on these aquatic resources. As noted above, the 2007 FSEIS failed to consider impacts to wetlands in the 5-year floodplain and wetlands that flood for less than 14-consecutive days. As a result, EPA concluded that the Corps overlooked impacts to some portion of “39,000 acres of suitable fish spawning habitat that meets the criterion of 8 days of inundation which will become unsuitable after project implementation. Therefore, these impacts appear underestimated in the FSEIS’s Aquatics Appendix (FSEIS, Appendix 11).”<sup>304</sup>

Rather than addressing these flaws, however, the DSEIS simply repeats them and then further constrains its analysis based on a series of additional assumptions that are as unfounded as they are unscientific. First, the Corps impermissibly limits its analysis to only a small subset of wetlands located within the 2-year floodplain that receive  $\geq 14$  consecutive days of flooding.<sup>305</sup> As a result, the DSEIS does not consider the adverse impacts of the Proposed Plan on aquatic habitat located between the 2-year and 5-year floodplain, or any aquatic habitat that floods for less than 14 consecutive days. This threshold error leads to a severe underestimate of the Proposed Plan’s impacts on aquatic resources. For example, the DSEIS does not evaluate how many acres would no longer flood to a depth of at least one foot for 8 consecutive days with the Pumps in place, even though the DSEIS makes clear that all fish spawning habitat would be lost in such areas.<sup>306</sup>

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<sup>298</sup> Clean Water Act 404(c) Final Determination at 56; *see also* DSEIS Appx. F-8 (Aquatic Resources) at 3.

<sup>299</sup> *Id.*

<sup>300</sup> Clean Water Act 404(c) Final Determination at 34.

<sup>301</sup> Clean Water Act 404(c) Final Determination at 56.

<sup>302</sup> Clean Water Act 404(c) Final Determination at i.

<sup>303</sup> Clean Water Act 404(c) Final Determination at 55.

<sup>304</sup> Clean Water Act 404(c) Final Determination at 57.

<sup>305</sup> *See* Section F.1.a. of these comments.

<sup>306</sup> *See* DSEIS Appx. F-8 (Aquatic Resources) at 3.



Second, even within that unduly narrow scope of analysis, the DSEIS inexplicably constrains its assessment to just a fraction of what it considered in the 2007 FSEIS, which itself was a severe underestimate. In the 2007 FSEIS, the Corps calculated the baseline quantity of aquatic habitat as 87,966 AAHUs for rearing.<sup>307</sup> In the DSEIS, however, the Corps claims that rearing habitat shrunk by a staggering 81 percent to just 16,269 AAHUs.<sup>308</sup> This severe contraction cannot be reconciled with the Corps' monitoring data for fish assemblages, which show no decline over this timeframe.<sup>309</sup>

Furthermore, the percentage decline in rearing habitat (81%) is almost twice the purported decline in wetland acreage over this timeframe (44%).<sup>310</sup> The DSEIS provides no explanation for this discrepancy. Nor does it explain why the decline in rearing habitat (81% decline) is over twice the decline in spawning habitat (33% decline), even though the latter is far more susceptible to changes in the depth of inundation (as the Corps claims has occurred over the new period of record). These illogical discrepancies are the hallmark of an arbitrary analysis.

Third, the Corps further obscures the impacts to wetland functions by relying on an unrealistic approach already rejected by EPA, as discussed in Section F.1 of these comments. For example, the DSEIS arbitrarily assumes that the Yazoo Pumps will cause no impacts to four of the eight wetland functions used in the Corps' HGM Approach, even for those wetlands that will experience a decrease in flood duration.<sup>311</sup> The DSEIS also significantly understates the adverse impacts to the wetland function involving the export of organic carbon, contradicting its own scientific studies.<sup>312</sup> The DSEIS compounds these false assumptions by manipulating the data to obscure the significant impacts to wetland functions and fish and wildlife habitat.<sup>313</sup>

Fourth, in addition to repeating these analytical errors, the DSEIS now disclaims 60 percent of the pumps' impacts on fisheries based on a clearly-flawed mischaracterization of the effects of hypoxia. The DSEIS shows that the pumps would eliminate 2,838 and 3,232 habitat units for spawning and rearing, respectively.<sup>314</sup> The DSEIS, however, drastically discounts those impacts based on the sweeping assertion that hypoxia has degraded *all* aquatic habitat in the Yazoo Backwater Area by 60 percent.<sup>315</sup> Accordingly, the Corps writes down the impacts of the Proposed Pan, claiming that it is only responsible for impacts to 1,703 and 1,939 habitat units for spawning and rearing, respectively.<sup>316</sup>

As an initial matter, the Corps has not justified this striking change in course, which contradicts the findings underlying the 2008 FSEIS.<sup>317</sup> In the 2007 FSEIS, the Corps calculated habitat suitability values

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<sup>307</sup> FSEIS Appx. 11 (Aquatics) Tables 7 & 8.

<sup>308</sup> DSEIS Appx. F-8 (Aquatic Resources) Table 2.

<sup>309</sup> *Id.* at 13.

<sup>310</sup> The 2007 Yazoo Pumps EIS looked at the potential for impacts to 189,600 acres of wetlands, while the DSEIS only looks at 82,981 acres. DSEIS, Appendix F-5 (Wetlands) at Table 85.

<sup>311</sup> *Compare* Clean Water Act 404(c) Final Determination, Appendix 6 at 1 *with* DSEIS Appx. F-5 (Wetlands) at Tables 70-79.

<sup>312</sup> *See* Section F.1.c. of these comments.

<sup>313</sup> *Id.*

<sup>314</sup> DSEIS Appx. F-8 (Aquatic Resources) at 4

<sup>315</sup> *Id.* at 5.

<sup>316</sup> *Id.* The Corps duplicated this same inconsistent analysis for spawning habitat. *Id.* As such, the errors identified here for rearing habitat apply equally to spawning habitat, underscoring the magnitude of the Corps' error.

<sup>317</sup> *State Farm*, 463 U.S. at 57 ("an agency changing its course must supply a reasoned analysis"). Here, the Corps is not writing on a blank slate and must provide a "reasoned explanation" for disregarding its prior factual findings.



based on the available monitoring data of fish populations. The DSEIS relies on those same habitat suitability values, but applies a downward 60 percent reduction based on fish sampling data from 1990 to 2008.<sup>318</sup> That data was, however, largely available to the Corps in the 2007 SEIS and did not warrant any such deduction then, let alone the striking 60 percent discount contained in the DSEIS. The Corps provides no reasoned basis for its remarkable change in course. If anything, the facts defy this change. If aquatic habitat did decline by 60 percent, one would expect a sharp downward trend in the fish assemblage since 2007. The evidence is exactly to the contrary—“Major changes have *not* been observed in the Big Sunflower drainage fish assemblage since 1993”—confirming that there is no rational basis for the Corps’ self-serving claim of a 60 percent decline in habitat.<sup>319</sup>

Furthermore, the Corps’ indiscriminate approach bears no rational relationship to the scientific literature or the Corps’ own data about the variable effects of hypoxia on the aquatic environment. Hypoxia can occur during backwater floods when stagnant flows limit the ability of re-aeration to maintain dissolved oxygen concentrations at lower depths in the water column.<sup>320</sup> Low-dissolved oxygen conditions do not, however, occur uniformly across the water column, but rather are stratified by layer. The Corps own data clearly depicts this point, showing dissolved oxygen levels above 3.0 mg/l<sup>321</sup> within the surface layer (depth of approximately 5 feet) across various streams in the Yazoo Basin that experienced hypoxia during the 2015 flood.<sup>322</sup> Due to that stratification, fish species can escape low dissolved oxygen conditions.<sup>323</sup> For example, the DSEIS explains how “the surface layer can serve as refuge” and “[u]nobstructed backwaters also provide horizontal and lateral avenues of escape from hypoxic waters.”<sup>324</sup> This surface-layer refuge encompasses 1,712,943.5 acre feet of water (approximately 58% of the water in the Yazoo Study Area), which plainly refutes the Corps’ across-the-board assertion that hypoxia degrades *all* aquatic habitat.<sup>325</sup>

If anything, the DSEIS’ analysis confirms the fact that the Proposed Plan will exacerbate the effects of hypoxia on aquatic resources. As explained above, the pumps will eliminate critical spawning habitat and short-hydroperiod wetlands that provide critical refuge for fish. As a result, “once eggs hatch, larval fish moving into deeper water encounter hypoxic conditions that likely lead to higher mortality.”<sup>326</sup> Yet, the DSEIS entirely fails to evaluate these impacts, as noted above, and instead relies on unfounded,

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*See California by & through Becerra v. United States Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1165 (N.D. Cal. 2019).

<sup>318</sup> DSEIS Appx. F-8 (Aquatic Resources) at 5.

<sup>319</sup> *Id.* at 13.

<sup>320</sup> DSEIS Appx. I (water quality) at 31.

<sup>321</sup> The DSEIS distinguishes between “hypoxic (dissolved oxygen < 3.0 milligrams per liter, mg/l)) and normoxic (> 3.0 mg/l).” DSEIS Appx. F-8 (Aquatic Resources) at 5.

<sup>322</sup> *Id.* at 19 Fig. 2-7. This point is even more apparent given that the Corps’ sampling sites do not even include small backwater tributaries or short hydroperiod wetlands, which provide refugia from hypoxic conditions. Instead of taking representative samples from those locations, the Corps only sampled dissolved oxygen levels along the Big Sunflower River and its major tributaries. *See* DSEIS Appx. I (Water Quality) at 12 Fig. 2-1. But these river locations are not representative and cannot therefore be extrapolated to the entire Yazoo Backwater Basin, contrary to the Corps’ flawed attempt to do so and falsely assert hypoxia effects all aquatic habitat.

<sup>323</sup> Clean Water Act 404(c) Final Determination Appx. I at 47 (“when hypoxic conditions develop, intolerant species will move away from the adverse conditions and seek more suitable habitat”).

<sup>324</sup> DSEIS Appx. F-8 (Aquatic Resources) at 8.

<sup>325</sup> DSEIS Appx. F-8 (Aquatic Resources) at Table 5.

<sup>326</sup> *Id.* at 14.



faulty reasoning to impermissibly skew the analysis and disclaim the pumps' significant, adverse impacts.

Fifth, on top of all these errors, the Corps uses non-representative average habitat values to mask the adverse impacts of the pumps on aquatic resources. The DSEIS selects nine fish species to assess the value of various habitat types for spawning.<sup>327</sup> The DSEIS then averages these habitat scores across all of the species to create an average habitat score, which it then uses to quantify the pumps' impacts of this critical resource.<sup>328</sup> But this exercise in averaging has a real-world limitations because "different species of fish require different sorts of habitat."<sup>329</sup> As explained by EPA, the fish species used by the Corps do not all depend on the same habitat to the same degree for spawning. For example, two of the selected species—ghost shiners and speckled chubs—spawn primarily in rivers.<sup>330</sup> A third species, threadfin shad, generally spawns in open river channels.<sup>331</sup> As explained by EPA, the Corps' "inclusion of species not as dependent on backwater areas as others causes the 'average' effect of the project (i.e., averaging of habitat scores across all species) to appear less severe."<sup>332</sup> The Corps never acknowledged, let alone fixed, this fundamental bias in its assessment of impacts to spawning habitat.

Sixth, the DSEIS' proposed mitigation is woefully inadequate to offset the pumps' far-reaching impacts on aquatic resources, as discussed in Section H of these comments.

#### c. The DSEIS Fails to Analyze Impacts to Amphibians and Reptiles

The DSEIS contains no analysis at all of the Proposed Plan's impacts on amphibians and reptiles, despite the many species found in the Yazoo Backwater Area, the significance of the area's wetlands and flood pulse for their survival, and the specific and detailed request to carefully evaluate the impacts on these species in the Conservation Organizations' scoping comments.

The 2008 veto documents 21 species of amphibians and 37 species of reptiles in the Yazoo Backwater Area,<sup>333</sup> virtually all of which "benefit from the flood pulse."<sup>334</sup> The veto concludes that the Yazoo Pumps would adversely impact virtually all of these species:

"the proposed hydrologic alterations will adversely impact approximately 21 species of amphibians and 32 species of reptiles by disrupting their reproductive cycles and feeding opportunities and thereby reducing overall productivity."<sup>335</sup>

This is because:

Reducing the spatial extent, depth, frequency, and duration of time wetlands in the project area are inundated will also adversely impact all 21 amphibian as well as 32 of the reptile species in the Yazoo River Basin that depend upon wetlands for breeding and foraging habitat. The life

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<sup>327</sup> 2007 FSEIS, Appx. 11 at 12.

<sup>328</sup> *Id.* at Table 6.

<sup>329</sup> *Env'tl. Def. v. U.S. Army Corps of Engineers*, 515 F. Supp. 2d 69, 79 (D.D.C. 2007).

<sup>330</sup> Clean Water Act 404(c) Final Determination, Appx. 6 at 2.

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> Clean Water Act 404(c) Final Determination at 32.

<sup>334</sup> Clean Water Act 404(c) Final Determination at 32-33.

<sup>335</sup> Clean Water Act 404(c) Final Determination at 60.



cycles of amphibians and reptiles in alluvial floodplain ecosystems are linked to hydrology as well as soil conditions and climate (Jones and Taylor, 2005). Abiotic factors that influence habitat conditions within floodplains include hydrologic regime, flood pulse intensity and duration, topography, wetland permanence (hydroperiod), water quality, and connectivity to rivers or streams. For many amphibians, the hydrology associated with floodplain wetlands is necessary for breeding and egg laying (Appendix 4).

All the amphibian species listed as occurring in the Yazoo Backwater Area (Appendix 2) require wetlands and/or ephemeral pools for breeding (Jones and Taylor, 2005). The proposed project would reduce the amount of surface water that reaches these floodplain habitats making it difficult for portions of the amphibian population to survive (Semlitsch, 2005). For example, newts (*Notophthalmus viridescens*) require wetlands for breeding and egg deposition, while requiring vernal and ephemeral pools for adult life stages. The proposed project would also adversely affect reptile and amphibian species by reducing flood pulses and wetland water recharge, modifying river-wetland connectivity, and increasing habitat fragmentation. The reduction in flooding would also adversely affect the ability of amphibians to disperse to other suitable habitats (Jones and Taylor, 2005). Further, amphibians provide a valuable prey base for aquatic insects, fish, crayfish, birds, and mammals. Thus, a decline in amphibian and reptile populations will impact food resources for other animal groups.<sup>336</sup>

In light of these findings, it is particularly critical that the DSEIS carefully assess the impacts to amphibians and reptiles from the Proposed Plan. It is also essential to assess the cumulative impact of the amphibian habitat losses resulting from the Proposed Plan in the context of the dire conditions currently facing amphibian populations worldwide. Amphibians thrive in cool wetland environments and small, isolated wetlands play especially important roles in amphibian productivity.<sup>337</sup> Amphibian populations thrive when there are a variety of small ecosystems within a regional landscape in which a “dynamic equilibrium” of different populations becomes established.<sup>338</sup> Habitat fragmentation can disturb this dynamic equilibrium by disruption patterns of amphibian emigration and immigration.

Amphibians, in general, are at critical risk worldwide. In the United States, the IUCN Red List of Threatened Species lists 56 amphibian species and 37 reptile species as known to be critically endangered, endangered, or vulnerable.<sup>339</sup> Worldwide, at least 1,950 species of amphibians are threatened with extinction of which 520 species are critically endangered, 783 are endangered, and 647 species are vulnerable. This represents 30 percent of all known amphibian species.<sup>340</sup> In 2004, scientists

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<sup>336</sup> Clean Water Act 404(c) Final Determination at 55.

<sup>337</sup> Gibbons, J. Whitfield, Christopher Winne, et. al. 2006. Remarkable Amphibian Biomass and Abundance in an Isolated Wetland: Implications for Wetland Conservation. Conservation Biology Volume 20, No. 5, 1457–1465.

<sup>338</sup> Mann, W., P. Dorn, and R. Brandl. 1991. Local distribution of amphibians: The importance of habitat fragmentation. Global Ecology and Biogeography Letters 1:36-41.

<sup>339</sup> IUCN Red List version 2013:2, Table 5: Threatened species in each country (totals by taxonomic group), available at [http://cmsdocs.s3.amazonaws.com/summarystats/2013\\_2\\_RL\\_Stats\\_Table5.pdf](http://cmsdocs.s3.amazonaws.com/summarystats/2013_2_RL_Stats_Table5.pdf) (visited on November 24, 2013.)

<sup>340</sup> IUCN Red List version 2013:2, Table 3a: Status category summary by major taxonomic group (animals), available at [http://cmsdocs.s3.amazonaws.com/summarystats/2013\\_2\\_RL\\_Stats\\_Table3a.pdf](http://cmsdocs.s3.amazonaws.com/summarystats/2013_2_RL_Stats_Table3a.pdf) (visited on November 24, 2013).



estimated that most of 1,300 other amphibian species are also threatened though sufficient data are currently lacking to be able to accurately assess the status of those species.<sup>341</sup>

A recent study demonstrates the increasingly dire conditions of amphibians worldwide:

“Current extinction rates are most likely 136–2707 times greater than the background amphibian extinction rate. These are staggering rates of extinction that are difficult to explain via natural processes. No previous extinction event approaches the rate since 1980 (Benton and King, 1989).

Despite the catastrophic rates at which amphibians are currently going extinct, these are dwarfed by expectations for the next 50 yr (Fig. 1). If the figure provided by Stuart et al. (2004) is true (but see Pimenta et al., 2005; Stuart et al., 2005), one-third of the extant amphibians are in danger of extinction. This portends an extinction rate of 25,000–45,000 times the expected background rate. Episodes of this stature are unprecedented. Four previous mass extinctions could be tied to catastrophic events such as super volcanoes and extraterrestrial impacts that occur every 10 million to 100 million years (Wilson, 1992). The other mass extinction seems to be tied to continental drift of Pangea into polar regions leading to mass glaciation, reduced sea levels, and lower global temperatures (Wilson, 1992). The current event far exceeds these earlier extinction rates suggesting a global stressor(s), with possible human ties.”<sup>342</sup>

Recent studies also point to the role of global climate change in promoting potentially catastrophic impacts to amphibian populations. For example:

- Global climate change will result in changes to weather and rainfall patterns that can have significant adverse effects on amphibians. Drought can lead to localized extirpation. Cold can induce winterkill in torpid amphibians. It is possible that the additional stress of climate change, on top of the stresses already created by severe loss of habitat and habitat fragmentation may jeopardize many amphibian species.<sup>343</sup>
- Recent studies suggest that climate change may be causing global mass extinctions of amphibian populations. Particularly alarming is the fact that many of these disappearances are occurring in relatively pristine area such as wilderness areas and national parks.<sup>344</sup> One recent study suggests that climate change has allowed the spread of a disease known as chytridiomycosis

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<sup>341</sup> Science Daily, Amphibians In Dramatic Decline; Study Finds Nearly One-Third Of Species Threatened With Extinction (October 15, 2004), available at <http://www.sciencedaily.com/releases/2004/10/041015103700.htm> (visited on November 24, 2013).

<sup>342</sup> McCallum, M. L. (2007). “Amphibian Decline or Extinction? Current Declines Dwarf Background Extinction Rate. *Journal of Herpetology* 41 (3): 483–491. doi:10.1670/0022-1511(2007)41[483:ADOECD]2.0.CO;2.

<sup>343</sup> Sjogren, P. 1993a. Metapopulation dynamics and extinction in pristine habitats: A demographic explanation. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 244; Sjogren, P. 1993b. Applying metapopulation theory to amphibian conservation. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 244-245.

<sup>344</sup> Pounds, J. A., and M. L. Crump. 1994. Amphibian declines and climate disturbance: The case of the golden toad and the harlequin frog. *Conservation Biology* 8:72-85; Lips, K. R. 1998. Decline of a Tropical Montane Amphibian Fauna. *Conservation Biology* 12:106-117; Lips, K., F.Brem, R. Brenes, J.D. Reeve, R.A. Alford, J. Voyles, C. Carey, L. Livo, A. P. Pessier, and J.P. Collins 2006. Emerging infectious disease and the loss of biodiversity. *Proceedings of the National Academy of Sciences* 103:3165-3170.



which has led to extinctions and declines in amphibians. Climate change has allowed this disease to spread by tempering the climate extremes that previously kept the disease in check.<sup>345</sup> About two-thirds of the 110 known harlequin frog species are believed to have vanished during the 1980s and 1990s because of the chytrid fungus *Batrachochytrium dendrobatidis*. Other studies indicate that amphibians may be particularly sensitive to changes in temperature, humidity, and air and water quality because they have permeable skins, biphasic life cycles, and unshelled eggs.<sup>346</sup>

- Climate change may also affect amphibian breeding patterns.<sup>347</sup> Amphibians spend a significant part of the year protecting themselves from cold or shielding themselves from heat. They receive cues to emerge from their shelters and to migrate to ponds or streams to breed from subtle increases in temperature or moisture. As the earth warms, one potential effect on amphibians is a trend towards early breeding, which makes them more vulnerable to snowmelt-induced floods and freezes common in early springs. Some studies already indicate a trend towards earlier breeding in certain amphibian species.<sup>348</sup>
- Increases in UV-B radiation in the northern hemisphere due to ozone depletion is also having an adverse impact on amphibians.<sup>349</sup> One study suggests that ultraviolet-B (UV-B) radiation adversely affects the hatching success of amphibian larvae.<sup>350</sup> High levels of UV-B also induced higher rates of developmental abnormalities and increased mortality in certain species (*Rana clamitans* and *R. sylvatica*) than others that were shielded from UV-B.<sup>351</sup> UV-B also can have detrimental effects on embryo growth.

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<sup>345</sup> Pounds, J.A., M.P.L. Fogden, J.H. Campbell. 2006. Biological response to climate change on a tropical mountain. *Nature* 398, 611-615.

<sup>346</sup> Carey, C., and M. A. Alexander. 2003. Climate change and amphibian declines: is there a link? *Diversity and Distributions* 9:111-121.

<sup>347</sup> Carey, C., and M. A. Alexander. 2003. Climate change and amphibian declines: is there a link? *Diversity and Distributions* 9:111-121.

<sup>348</sup> Beebee, T. J. C. 1995. Amphibian Breeding and Climate. *Nature* 374:219-220; Blaustein, A. R., L. K. Belden, D. H. Olson, D. M. Green, T. L. Root, and J. M. Kiesecker. 2001. Amphibian breeding and climate change. *Conservation Biology* 15:1804-1809; Gibbs, J. P., and A. R. Breisch. 2001. Climate warming and calling phenology of frogs near Ithaca, New York, 1900-1999. *Conservation Biology* 15:1175-1178.

<sup>349</sup> Blither, M., and W. Ambach. 1990. Indication of increasing solar ultraviolet-B radiation flux in alpine regions. *Science* 248:206-208; Kerr, J. B., and C. T. McElroy. 1993. Evidence for large upward trends of ultraviolet-B radiation linked to ozone depletion. *Science* 262:1032-1034.

<sup>350</sup> Blaustein, A. R., P. D. Hoffman, D. G. Hokit, J. M. Kiesecker, S. C. Walls, and J. B. Hays. 1994a. UV repair and resistance to solar UV-B in amphibian eggs: A link to population declines? *Proceedings of the National Academy of Science* 91:1791-1795.

<sup>351</sup> Grant, K. P., and L. E. Licht. 1993. Effects of ultraviolet radiation on life history parameters of frogs from Ontario, Canada. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 101.



#### d. The DSEIS Fails to Analyze Impacts to Listed Species and Critical Habitat

The Yazoo Backwater Area is home to a number of threatened and endangered species protected under the Endangered Species Act (ESA), including the pondberry, wood stork, least tern, pallid sturgeon, fat pocketbook mussel, sheepsnose mussel, and rabbitsfoot mussel.<sup>352</sup> Yet, the DSEIS overlooks critical threats to these species caused by the Proposed Plan and thereby fails to ensure the project will not jeopardize listed species or adversely modify critical habitat, as required by the ESA and Clean Water Act.<sup>353</sup> The DSEIS also fails to assess impacts to many state listed species found in the Yazoo Backwater Area, including the Louisiana black bear, swallow tailed kite, peregrine falcon, Bewicks wren, pyramid pigtoe, spike, and southern redbelly dace.

As an initial matter, the DSEIS fails to provide any analysis of the Proposed Plan's impacts on the endangered pondberry, claiming that there is not enough data to make an effects determination.<sup>354</sup> This omission forecloses the public's ability to meaningfully comment on the DSEIS. It also violates the Corps' obligation under the ESA to ensure the Proposed Plan will not jeopardize the species in violation of the ESA. Accordingly, the Corps must reinitiate formal consultation with the FWS and comprehensively assesses the impacts of the Proposed Plan on the survival and recovery of the species.

Through formal consultation, the Corps and FWS must comprehensively analyze the impacts of the Proposed Plan on the 5-year floodplain, which contains the majority of pondberry colonies in the Yazoo Backwater Area. As explained by the FWS, the pondberry is a wetland plant found in habitats that experience regular overbank flooding—such as many of the populations within bottomland hardwood forests of Mississippi.<sup>355</sup> In the Yazoo Backwater Area, “most colonies/sites are located on the more frequently flooded 0-5 year floodplain,” as shown by the Corps' data.<sup>356</sup> The Proposed Plan would significantly alter the hydrology of these sites, as discussed in detail above, highlighted by the EPA in the veto, and documented by the FWS in the 2007 Biological Opinion. Accordingly, the Corps must consider: (1) the extent to which the Proposed Plan will reduce flooding in relation to baseline conditions; (2) the change in hydrology due to a reduction in backwater flood frequency; (3) the extent that changes in backwater flooding by the project will alter the hydrology of known sites in the Yazoo Backwater Area, including the Delta National Forest; and (4) the response of the pondberry to these hydrological changes.

As part of this analysis, the Corps and FWS must carefully identify the survival and recovery needs of the pondberry (*i.e.*, tipping points) to evaluate whether the species will be jeopardized. A tipping points analysis is critical because the Proposed Plan will significantly alter the hydrology of the Yazoo Backwater Area, degrading some of the few known remaining populations in the species' range.<sup>357</sup>

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<sup>352</sup> 2018. Mississippi Natural Heritage Program. Listed Species of Mississippi. (available at <https://www.mdwfp.com/museum/seek-study/science-resources/endangered-species/> accessed November 29, 2020).

<sup>353</sup> See 16 U.S.C. §1536(a)(2).

<sup>354</sup> DSEIS Appx. H (TES and MBTA) at 1.

<sup>355</sup> U.S. Fish and Wildlife Service Pondberry Final Biological Opinion (July 2, 2007) at 62 [hereinafter “BiOp”]; see also U.S. Fish and Wildlife Service, Southeast Region Mississippi Field Office, Pondberry, 5-Year Review: Summary and Evaluation (2014), available at [https://ecos.fws.gov/docs/five\\_year\\_review/doc4358.pdf](https://ecos.fws.gov/docs/five_year_review/doc4358.pdf) [hereinafter “5-Year Review”].

<sup>356</sup> 2007 Biological Opinion at 62.

<sup>357</sup> 2007 Biological Opinion at 117.



Accordingly, a tipping point analysis is essential to ensure that the Proposed Plan does not push the species across the line to eventual extinction, or past a point from which recovery is impossible.

Through the consultation process, the Corps and FWS must also consider significant new information regarding the pondberry's endangered status. In 2014, the FWS undertook a 5-year review and found that "some pondberry colonies have become extirpated on the [Delta National] Forest, while others have experienced recent declines, potentially related to stem dieback, hydrology, interspecific plant competition, and natural canopy disturbances."<sup>358</sup> The Corps must factor these recent declines into the baseline condition and evaluate the synergistic impacts of the Proposed Plan on the species' survival and recovery.

Furthermore, the Corps and FWS must fully evaluate the purported severe decline in wetland acreage in the 2-year floodplain. According to the DSEIS, there has been a one to three foot reduction in the 2-year floodplain elevation, which has resulted in the loss of at least 96,139 acres of wetlands in the 2-year floodplain since 2003. If those numbers are indeed accurate, the Corps must assess how those declines have impacted pondberry colonies and the extent to which the Proposed Plan could exacerbate the problem and jeopardize the species.<sup>359</sup>

In addition, the Corps and FWS must reevaluate the conservation measure proposed in the Biological Opinion. In order to avoid a jeopardy determination, the Corps agreed to establish two new pondberry populations in areas where the hydrology would not be adversely affected.<sup>360</sup> As made clear in the FWS' recent 5-year review, however, attempts to transplant pondberry populations have been "met with limited success."<sup>361</sup>

In Mississippi, experimental outplantings of naturally rooted pondberry stems were established at Leroy Percy State Park and Yazoo National Wildlife Refuge in Washington County as well as Hillside and Morgan Brake National Wildlife Refuges in Holmes County (Devall et al. 2004a). Survival one year after transplanting ranged from 35% to 84%. The current status of these transplants is unknown. In addition, plants cloned from populations in Sharkey and Bolivar Counties, Mississippi using micropropagation techniques (cf. Hawkins et al. 2007) were successfully transplanted to a research facility in Sharkey County (cf. Lockhart et al. 2006). This site is essentially a garden plot and well-maintained. It is unknown how these clones would perform in the wild.<sup>362</sup>

This new data undercuts the Corps' reliance on transplanting efforts to ensure against jeopardy to the species.

As part of the consultation process, the Corps and FWS must also address a series of unfounded assertions in the DSEIS regarding the adverse impacts of the Proposed Plan on other listed or threatened

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<sup>358</sup> 5-Year Review at 14.

<sup>359</sup> The 5-Year Review highlights how large flood control projects within the Mississippi Alluvial Valley have likely contributed to the decline of pondberry populations within bottomland hardwood forests of this area, particularly within the Big Sunflower River and Yazoo River drainages of Mississippi. 5-Year Review at 22. In the absence of such regular flood regimes, pondberry may be outcompeted by other vegetation. *Id.*

<sup>360</sup> 2007 Biological Opinion at 115.

<sup>361</sup> 5-Year Review at 20.

<sup>362</sup> 5-Year Review at 21.



species in the Yazoo Backwater Area. First, the Corps' entire analysis of listed species is infected by its severe underestimate of the Proposed Plan's impacts on the hydrology of the Yazoo Backwater Area, including the complete failure to assess the impacts to wetlands in the five-year floodplain and short hydro-period wetlands. As a result, the Corps reaches conclusions that are unfounded and contradicted by the evidence in the record. For example, the Corps claims that any impacts to the Wood Stork are insignificant or discountable because "there should be sufficient remaining wetland foraging habitat for non-breeding Mexican Wood Storks."<sup>363</sup> But that assertion simply ignores the far-reaching consequences of the Proposed Plan on the species' foraging habitat, which includes shallow depressions that concentrate fishes during periods of low water.<sup>364</sup> Furthermore, the Corps' baseless assertion cannot be squared with EPA's veto, which unequivocally found that the proposed pumps would "significantly degrade critical habitat for over 40 wetland dependent bird species," including the Wood Stork.<sup>365</sup>

In addition, the DSEIS Migratory Bird Appendix states that an MVK hydrologic analysis shows that the Proposed Plan would cause a loss of "up to 34,000 acres of inundated habitat including 23,500 acres of inundated floodplain forest for water- and wetland-dependent birds (e.g., herons, egrets, ibises) that utilize this habitat for foraging or breeding" in the 25% exceedance elevation.<sup>366</sup> Such a massive change could have significant implications for listed species, but it was not accounted for in the DSEIS' assessment of impacts to wetlands or the species that rely on them.

Second, the Corps dismisses the adverse impacts of the Yazoo Pumps on listed species based on conclusory or counterfactual statements that are contrary to the best available scientific data. For example, the DSEIS claims that the Proposed Plan will have minimum adverse impacts on potential foraging habitat for the Least Tern.<sup>367</sup> This assertion is doubly flawed. It underestimates the Proposed Plan's impacts on backwater hydrology, as just noted. Furthermore, it assumes an "absence of Least Terns" from the Yazoo Backwater Area.<sup>368</sup> As noted above, however, Audubon's spring/fall migration analyses found the project area supports sizeable global populations of several species, including the Interior Least Tern. This available data plainly refutes the Corps' conclusory assumptions.

The DSEIS also claims that the Proposed Plan will not adversely affect the endangered pallid sturgeon because no data supports routine movement of the species from the Mississippi River into the Yazoo drainage.<sup>369</sup> To the contrary, available habitat mapping shows use of the Yazoo Backwater Area by the species.<sup>370</sup> The Corps must consider this available data and reassess its flawed conclusion.

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<sup>363</sup> DSEIS Appx. H (TES and MBTA) at 14.

<sup>364</sup> *Id.* at 13.

<sup>365</sup> Clean Water Act 404(c) Final Determination at 54.

<sup>366</sup> DSEIS, Appendix H (in the Migratory Bird section of this Appendix) at 6.

<sup>367</sup> DSEIS, Appendix H (TES and MBTA) at 21.

<sup>368</sup> *Id.*

<sup>369</sup> *Id.* at 26.

<sup>370</sup> See, e.g., <https://platteriverprogram.org/target-species/pallid-sturgeon> (mapping Pallid Sturgeon Current Range to include the Yazoo Backwater Area); <https://www.inaturalist.org/taxa/112106-Scaphirhynchus-albus> (same); <https://www.inaturalist.org/taxa/112106-Scaphirhynchus-albus> (same); 2014. Mississippi Department of Wildlife, Fisheries and Parks & Mississippi Museum of Natural Science. Endangered Species of Mississippi. Available at <https://www.mdwfp.com/museum/seek-study/science-resources/endangered-species/> accessed November 29, 2020 (known range map for pallid sturgeon includes the Yazoo and Big Sunflower Rivers).



The DSEIS also totally fails to consider how the elimination of critical spawning habitat, degradation of rearing habitat, and impairment of aquatic food webs will impact the host fishes for the threatened and endangered mussel species that likely inhabit the Yazoo Backwater Area. As noted in Section F.8.b of these comments, floodplain fisheries are sustained by a network of riverine backwater wetlands<sup>371</sup> and the Proposed Plan would significantly degrade this ecosystem. The Corps must consider how loss of spawning and rearing habitat will further impact mussel species.

## 9. The DSEIS Fails to Analyze Cumulative Impacts

The cumulative impacts analysis is a critical component of NEPA review because it ensures that the reviewing agency will not “treat the identified environmental concern in a vacuum.”<sup>372</sup> A meaningful assessment of cumulative impacts must therefore identify “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”<sup>373</sup> The DSEIS abjectly fails to satisfy this obligation and simply ignores other past, present or reasonably foreseeable actions that will exacerbate the Proposed Plan’s significant degradation of the environment.

First, the DSEIS entirely fails to consider the incremental consequences of the Proposed Plan in light of the asserted drastic declines in wetland baseline numbers. According to the DSEIS, 96,139 acres of wetlands that were in the 2-year floodplain in 2003 are no longer in the 2-year floodplain. The DSEIS cannot brush these declines aside. Instead, it must fully account for these highly significant losses in its cumulative impacts analysis and assess whether the Proposed Plan, which would cause significant degradation on its own will “represent the straw that breaks the back of the environmental camel.”<sup>374</sup>

Second, the DSEIS fails to consider the Proposed Pumps’ significant degradation of the aquatic ecosystem in the context of the Lower Mississippi River Alluvial Valley. This oversight simply ignores EPA’s insistence that the pumps’ impacts must be considered:

“in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.”<sup>375</sup>

The majority of those losses have been traced directly to the effects of federal flood control and drainage projects.<sup>376</sup> Moreover, from just the 1970s to 2006, the Yazoo Backwater Area lost 11 percent of its remaining forested wetlands.<sup>377</sup>

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<sup>371</sup> Clean Water Act 404(c) Final Determination at 34.

<sup>372</sup> *Grand Canyon Trust v. FAA*, 290 F.3d 339, 346 (D.C. Cir. 2002).

<sup>373</sup> 40 C.F.R. § 1508.7 (emphasis added).

<sup>374</sup> *Grand Canyon Trust*, 290 F.3d at 343.

<sup>375</sup> Clean Water Act 404(c) Final Determination at iii.

<sup>376</sup> Department of the Interior, *The Impact of Federal Programs on Wetlands, Volume I: The Lower Mississippi Alluvial Plain and the Prairie Pothole Region*, A Report to Congress by the Secretary of the Interior, October 1988 at 60.

<sup>377</sup> Dahl, T.E., J. Swords and M. T. Bergeson. 2009. Wetland inventory of the Yazoo Backwater Area, Mississippi - Wetland status and potential changes based on an updated inventory using remotely sensed imagery. U.S. Fish and



This analysis is even more critical, given the Corps' newfound assertion that flood-control measures have resulted in an even greater decline in baseline wetland acres since the veto.

Third, the DSEIS fails to consider the Proposed Plan's adverse impacts in the context of the staggering declines suffered by multiple species, including amphibians and bird species. For example, a recent article in Science Magazine reported on the staggering loss of three billion north American birds since 1970, including species that will be adversely impacted by the Proposed Plan.<sup>378</sup> Furthermore, in 2019, Audubon released a groundbreaking report, *Survival by Degrees: 389 Bird Species on the Brink*, which found two-thirds (389 of 604) North American bird species are at risk of extinction from climate change.<sup>379</sup> The Proposed Pumps would accelerate these declines by altering the hydrology of the Yazoo Backwater Area and eliminating thousands of acres of habitat for these species. As EPA warned, "[t]he reduction in the extent and duration of the spring flood pulse would accelerate the decline of many bird species that depend upon the wetland habitats of the lower Yazoo River (Appendix 4)." Yet, the DSEIS contains no analysis of these cumulatively significant losses.

Fourth, the DSEIS entirely fails to consider the impacts of climate change, although this is "precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."<sup>380</sup> As documented in the Conservation Organizations' scoping comments, climate change is already causing significant impacts in the Mississippi River Valley and these impacts will likely grow, as recognized by the recently released Fourth National Climate Assessment.<sup>381</sup> These impacts will exacerbate the Proposed Pumps impacts on aquatic resources, migratory birds, and amphibians. The DSEIS simply ignores this overwhelming scientific literature and thereby overlooks a critical issue.

## 10. The DSEIS Fails to Analyze Environmental Justice Implications

To comply with NEPA, the Corps must take a hard look at the environmental justice implications of the Proposed Plan.<sup>382</sup> The Corps abdicated that duty in the 2007 FSEIS by failing to address the adverse impacts of the Yazoo Pumps on communities of low income and color , all while asserting benefits "that

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Wildlife Service, Division of Habitat and Resource Conservation, Washington, D.C. 30 p. (available at <https://www.fws.gov/wetlands/documents/Wetland-Inventory-of-the-Yazoo-Backwater-Area-Mississippi.pdf>).

<sup>378</sup> Elizabeth Pennisi, Three billion North American birds have vanished since 1970, surveys show, *Science*, September 19, 2019 (available at <https://www.sciencemag.org/news/2019/09/three-billion-north-american-birds-have-vanished-1970-surveys-show>).

<sup>379</sup> Audubon, *Survival by Degrees* (2019), available at <https://www.audubon.org/climate/survivalbydegrees>.

<sup>380</sup> *Center for Biological Diversity v. Nat'l Hwy Traffic Safety Administration*, 538 F.3d 1172, 1217 (9th Cir. 2008); *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 711 (9th Cir. 2009) (NEPA analysis properly included analysis of the effects of climate change on polar bears, including "increased use of coastal environments, increased bear/human encounters, changes in polar bear body condition, decline in cub survival, and increased potential for stress and mortality, and energetic needs in hunting for seals, as well as traveling and swimming to denning sites and feeding areas.")

<sup>381</sup> The SEIS should fully consider and carefully evaluate the information contained in the Fourth National Climate Assessment, which can be accessed at <https://nca2018.globalchange.gov/>.

<sup>382</sup> See *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 140 (D.D.C. 2017) ("the Corps did not properly consider the environmental-justice implications of the project and thus failed to take a hard look at its environmental consequences."). A comprehensive environmental justice analysis is also essential to the Corps "public interest review," which must consider the "probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest." 33 C.F.R. § 320.4.



may not be realized.”<sup>383</sup> In the DSEIS, the Corps once again disregards the adverse impacts on communities of low income and color, while falsely overstating the benefits. This “skewed analysis” impedes a “full and fair discussion” of the Proposed Plan’s environmental justice impacts.<sup>384</sup> The DSEIS also withheld any discussion of alternative solutions, depriving environmental justice communities of any choice in the decision. Compounding these errors, the DSEIS failed to ensure that communities of low income could meaningfully participate in the DSEIS and provide critical feedback.

The DSEIS entirely overlooks a series of adverse and disproportionate impacts to communities with environmental justice issues, i.e. communities that have high populations of vulnerable peoples (Black, low-income, poorly educated, etc) who are disproportionately exposed to environmental threats (pollution, elevated cancer risk, flooding, etc). First, the proposed pumps would discharge 14,000 cfs into the Yazoo River at flood stages, increasing flood risks to homes, businesses, and communities located along or near the Yazoo River. Although EPA highlighted these concerns in its scoping comments, the Corps dismissed these risks based on a fundamentally flawed hydrological model that “cannot be trusted to get a correct answer under any type of changes, such as the additional flows generated by the pumps.”<sup>385</sup> As a result, the DSEIS entirely overlooks the disproportionate threats of increased flooding caused by the Proposed Plan on communities of low income and color located along the Yazoo River, and particularly in north Vicksburg.

Second, the Corps falsely claims that the “the project would NOT negatively affect hunting and fishing, which some populations of low income rely on for subsistence.”<sup>386</sup> But that emphasis underscores the DSEIS’s abject failure to analyze and mitigate the significant adverse impacts of the project on aquatic resources and waterfowl, as thoroughly exposed in Sections F.8 and H of these comments. For example, the DSEIS entirely ignores the fact that the Proposed Plan will reduce, if not eliminate, backwater flooding on at least 22,601 acres of wetlands that currently flood for less than 14 consecutive days and provide crucial fish spawning habitat. There is no mitigation for these losses. In fact, the DSEIS fails to even mitigate the significant impacts to the narrow subset of aquatic habitat it did consider. Likewise, the DSEIS contains no discussion of the Corps’ own data, which shows that the Proposed Plan would eliminate 1.3 million Duck Use Days. While that figure severely underestimates the Proposed Plan’s impacts, it nonetheless represent a 12.4% loss in the total DUDs annually and indicates significant harm to overwintering waterfowl population. The resultant degradation of these aquatic and hunting resource will disproportionately impact people that are economically disadvantaged in the backwater area. Thus, just as EPA explained in the veto, “it is likely the project could adversely impact minority and/or low income populations that depend on the Yazoo Backwater Area’s natural resources for subsistence.”<sup>387</sup>

At the same time, the Corps vastly overstates the benefits of the Proposed Plan, which “may not be realized.”<sup>388</sup> First, the Corps claims that environmental justice communities can expect improved aquatic conditions and more opportunities for subsistence fishing as a result of the low-flow supplemental groundwater wells.<sup>389</sup> But that conclusory assertion is defied by the evidence, which

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<sup>383</sup> Clean Water Act 404(c) Final Determination at 65-69 (identifying flaws in Corps’ environmental justice analysis).

<sup>384</sup> *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 965 (9th Cir. 2005).

<sup>385</sup> Fleenor Report at 2.

<sup>386</sup> DSEIS Appx. F-1 (Environmental Justice) at 6.

<sup>387</sup> Clean Water Act 404(c) Final Determination at 67.

<sup>388</sup> Clean Water Act 404(c) Final Determination at 66.

<sup>389</sup> DSEIS Appx. F-1 (Environmental Justice) at 9.



shows the wells would cause unacceptable adverse impacts. If anything, the purported benefits of the groundwater wells are vastly overstated, if not entirely illusory, as discussed in Section H of these comments. The DSEIS not only fails to address these inadequacies, it also fails to disclose the fact that the Corps has significantly *reduced* the amount of mitigation—a counter-productive reversal that accentuates the impacts of the Proposed Plan on low-income and minority communities.

Second, the Corps claims that the Proposed Plan will benefit communities of low income and color by lowering elevations greater than 1-year flood. As discussed in Section C above, however, the Yazoo Pumps will not provide meaningful protection to communities. For example, had the Yazoo Pumps been in operation during the 2019 flood, 442,195 acres—83% of the lands that flooded in 2019—would still have been underwater. Just 17% of the acreage that flooded in 2019 would have been drained by the Yazoo Pumps.

Third, the Corps has not fully analyzed the impact of the Proposed Plan on potential economic development in communities with potential EJ concerns. The DSEIS claims that the proposed pumps would benefit agricultural production.<sup>390</sup> As EPA explained though, “the primary agricultural beneficiaries have declined over 50 years from 2,913 farmers who owned 140 acres each to 192 farmers who own 2,036 acres each.”<sup>391</sup> There has likely been even greater consolidation of farm ownership since the veto was issued in 2008. There is no evidence that benefiting these few farmers would result in economic benefits to communities of low income and communities of color, especially given that such large-scale farming increasingly relies on mechanization.

In addition to the flawed analysis of impacts, the DSEIS refused to consider any alternative approaches that would provide sustainable benefits to communities that are already disproportionately impacted by environmental and social justice issues in the Yazoo Backwater Area, while restoring the environment in a manner that promotes economic and social equity. For example, the Conservation Groups proposed the Resilience Alternative as a sustainable way to reduce flood risks, including purchasing wetland reserve and floodplain easements, voluntary buyouts and relocations, and flood-proofing infrastructure (including elevating homes, buildings and roads). These options will improve economic security and improve water quality. The DSEIS, however, withheld that option and instead presents a false choice between the No Action Alternative—and the Proposed Plan—both of which will disproportionately impact communities that are already struggling due to economic and racial injustice. In reality, this is no choice at all. The DSEIS must remedy this error by providing the public with a robust analysis of alternatives and a meaningful comparison of the environmental justice implications of the Proposed Plan as compared to other alternative solutions, such as the Resilience Alternative.

The Corps also failed to ensure that communities of low-income and color had an opportunity to meaningfully participate in this DSEIS process and voice their concerns and preferences. As part of the Section 404(c) veto process, EPA engaged in significant outreach with local communities to understand their concerns and expectations regarding the proposed pumps.<sup>392</sup> By contrast, the Corps held one “virtual public meeting” during the public scoping period, without even considering whether this online format was accessible to communities of color and low-income. This was a significant oversight given that NEPA requires agencies to assess whether affected communities can access available

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<sup>390</sup> *Id.*

<sup>391</sup> Clean Water Act 404(c) Final Determination at 66.

<sup>392</sup> *Id.* at 68.



information.<sup>393</sup> The online platform used by the Corps, however, was largely inaccessible to the vast majority of local residents impacted by the proposed pumps.<sup>394</sup>

As these flaws demonstrate, the Proposed Plan will cause greater impacts than acknowledged by the DSEIS, while providing far fewer benefits. The Corps has not provided communities of color and low income with a fair assessment of the Proposed Plan's environmental justice implications. Nor has the Corps provided those communities with sustainable solution or a meaningful opportunity to participate in the process.

## 11. The DSEIS Fails to Evaluate the Economic Costs and Benefits of the Proposed Plan

The DEIS fails to examine the economic costs and benefits of the Proposed Plan. These analyses are essential in light of the new data, changed conditions, cost increases, new project components, and new project location, among other things. This update is also critical given the many deficiencies in the 2007 FSEIS economic assessment.

In assessing project benefits, the DSEIS must pay careful attention to the limited acreage areas that will be drained by the Proposed Plan, as discussed in Section C of these comments. In assessing benefits for these acres, the DSEIS must also account for the flood frequencies and length of time that it takes the Pumps to drain water off the landscape when calculating benefits. The DSEIS must ensure that the same criteria used to assess the geographic extent of wetland impacts is also used to assess the geographic extent of flood damage reduction benefits. The DSEIS must ensure that benefits are not derived from reductions in flooding on any of the 250,000-plus acres of conservation lands in the Yazoo Backwater Area—lands that are being managed precisely for their wetland values. The DSEIS must ensure that benefits are not derived from reductions in flooding on any of the 19,463-plus acres of flooding and flowage easements owned by the Corps in the Yazoo Backwater project area.<sup>395</sup>

### a. Costs of Construction, Mitigation, and Operations and Maintenance

The DSEIS should develop a completely new estimate of project costs, including mitigation costs. A simple update based on the Corps' Construction Cost Index is insufficient to meaningfully account for the increases in project costs given the passage of 15 years (the 2007 estimate was based on 2005 price levels), the many changes in the project area, the increased costs associated with restoring wetlands on frequently flooded agricultural lands, the proposed Deer Creek site location—which will requires significant additional construction than would be required at Steele Bayou, and the costs of the newly proposed well fields, among many other things.<sup>396</sup>

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<sup>393</sup> NEPA requires that "agencies shall consider the ability of affected [communities] to access electronic media" when "selecting appropriate methods for public involvement." 40 C.F.R. §1506.6(b).

<sup>394</sup> Internet adoption in Issaquena County, Mississippi is 0-20% and broadband access is 0%, both of which underscore the barriers to participating in an online meeting. See [https://www.fcc.gov/reportsresearch/maps/connect2health/index.html#l=32.7122,-90.953064&z=10&t=broadband&bbm=wn\\_dl&dmf=none](https://www.fcc.gov/reportsresearch/maps/connect2health/index.html#l=32.7122,-90.953064&z=10&t=broadband&bbm=wn_dl&dmf=none) (last visited Nov. 28, 2020).

<sup>395</sup> U.S. Army Corps of Engineers Response to August 12, 2003 Freedom of Information Act Request for Flowage Easement Data Submitted by American Rivers.

<sup>396</sup> The Corps' 2007 SEIS estimated construction costs at more than \$220 million based on 2005 price levels. Updating those costs using the Corps' Civil Works Construction Cost Index and current mitigation costs puts the cost of construction including required compensatory mitigation at well over \$300.6 million based on 2018 price levels. The additional promised reforestation brings the total project construction costs to \$438.5 million. The



Project costs should also include the quantified value of the ecosystem services that will be lost to the Yazoo Pumps, as required by the March 2013 Principles and Requirements for Federal Investments in Water Resources and the December 2014 Interagency Guidelines that implement those Principles and Requirements (collectively, the PR&G). The PR&G apply to Corps projects, and the Corps has been directed to develop agency specific guidelines to ensure full implementation.

The March 2013 Principles and Requirements state that evaluation methods “should apply an ecosystem services approach in order to appropriately capture all effects (economic, environmental and social) associated with a potential Federal water resources investment.” The December 2014 Interagency Guidelines state that “Federal investment impacts on the environment or ecosystem may be understood in terms of changes in service flows. The process of identifying, evaluating, and comparing these changes provides a useful organizing framework to produce a complete accounting. Reduced service flows over time amount to costs, and increased services flows over time amount to benefits.” The Guidelines also state: “Agencies must provide an explicit list of the services that flow from the existing study area ecosystems and infrastructure (including operational plans) with identification of those services that are likely to meaningfully change within the larger context of the watershed because of the Federal investment.”

#### b. Non-Federal Cost Share

The DEIS must carefully assess whether locating the Yazoo Pumps at the Deer Creek location results in the loss of the non-federal cost share waiver enacted in 1997. The non-federal cost share waiver applies “to any project” or “separable element thereof” on which physical construction is initiated after April 30, 1986.<sup>397</sup> For purposes of this provision, “physical construction shall be considered to be initiated on the date of the award of a construction contract.”<sup>398</sup>

The Water Resources Development Act of 1986 imposed a 25% non-federal cost share for all flood control projects on which physical construction was initiated after April 30, 1986 (33 U.S.C. § 2213). This provision established a non-federal cost share for the Yazoo Pumps. A construction contract had been awarded for inlet and outlet channel and cofferdam at the Steele Bayou location of the Yazoo Pumps on March 25, 1986, but construction did not begin until May 5, 1986.

The Water Resources Development Act of 1996 exempted the Yazoo Pumps from the non-federal cost share that had been implemented in 1986, while raising the non-federal cost share for all other flood control projects to 35%. That exemption was created by the addition of the following language to the cost share provision: “For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract.”<sup>399</sup> Notably, the Yazoo Pumps project was not mentioned by name in the provision that enacted the exemption.

The contract award that triggered the Yazoo Pumps cost-share waiver was the contract to construct the entrance and exit channel and cofferdam for the pump station at the Steele Bayou location. This work was completed in 1987 at a cost of approximately \$2,500,000. However, this construction is only a

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2007 SEIS estimated operations and maintenance costs at \$2.1 million each year.

<sup>397</sup> 33 USC 2213(e).

<sup>398</sup> 33 USC 2213(e).

<sup>399</sup> 33 USC 2213 (e)(1).



component of the Yazoo Pumps project if the Pumps are located at Steele Bayou. The already-constructed entrance and exit channel and cofferdam could serve no purpose whatsoever for the Yazoo Pumps—and will not be a component of the Yazoo Pumps project—if the Pumps are moved to the Deer Creek location. See Figure 13, below.<sup>400</sup> As a result, the date of the award of the contract for these components would no longer act to waive the non-federal cost share requirement.

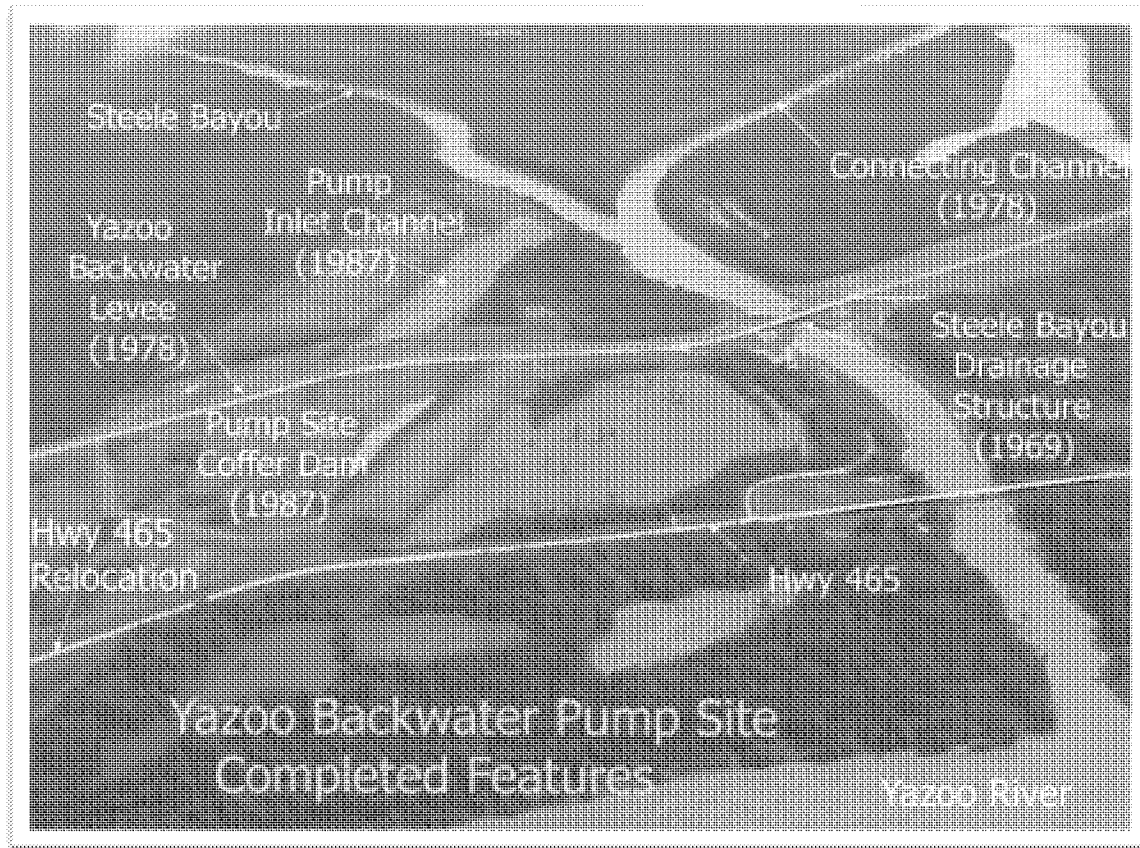


Figure 13, Completed Construction at Steele Bayou Location from USACE Presentation to EPA, Yazoo Backwater Project Brief Region IV 15 May 2019

In short, if the Yazoo Pumps are moved to the Deer Creek location, the project could not proceed unless a non-federal sponsor could provide the non-federal cost share of 35% of total project costs (including mitigation). So, for example, if it costs \$440 million to build the Yazoo Pumps at the Deer Creek location, the non-federal sponsor would be required to contribute \$154 million of those costs, plus all necessary lands, easements, and rights of way. If construction costs increase, the costs to the non-federal sponsor would also increase since the non-federal cost share is based on a percentage of total project costs (including mitigation).

#### c. Flood Damage Reduction Benefits—Agriculture

The 2007 SEIS determined that more than 80% of the alleged benefits from the Yazoo Pumps will come from increased agricultural production—which makes it clear that agricultural drainage is the project’s true primary purpose. As the Corps is well aware, draining wetlands to promote increased agricultural

<sup>400</sup> This slide was obtained through a Freedom of Information Act request.



production is an archaic concept from another era, and is in direct conflict with current federal law and policy.

The 2007 analysis of agricultural benefits also contained many extensive flaws, as documented by an independent economic review prepared in cooperation with the Environmental Protection Agency.<sup>401</sup> The DEIS must make sure that these flaws are not repeated in the new economic analysis. To this end, it is essential that the DSEIS start over from scratch and conduct a fundamentally new and comprehensive assessment of agricultural benefits that carefully assesses and accounts for at least the following:

- (1) A full and accurate accounting of land use in the Yazoo Backwater Area. Agricultural benefits must be carefully assessed only on agricultural lands that would see reduced levels of inundation during the growing season sufficient to justify more intensive agricultural practices. No agricultural or other flood damage reduction benefits should be calculated for conservation and easement lands in the Yazoo Backwater Area. Instead, the value of the ecosystem services lost due to adverse project impacts on these lands must be quantified and accounted for as a project cost in the benefit-cost assessment. In addition, no agricultural or other flood damage reduction benefits should be calculated for lands used for mitigation for the Yazoo Pumps or other projects, or on lands that will engage in voluntary reforestation pursuant to the Proposed Plan.
- (2) A comprehensive assessment of whether the Yazoo Pumps would in fact provide any statistically significant benefit to agricultural production, or would instead harm agricultural production in the Yazoo Backwater Area. A scientific study conducted in the Yazoo River basin strongly suggests that the Yazoo Pumps would harm—not help—agricultural production in the Yazoo Backwater Area.<sup>402</sup>

This study looked at the riverine hydrological and regional climatic regime relationships to agriculture (cotton, soybeans) and the principal riverine fish stocks in the upper Yazoo River basin. The study looked at 31 years of data (from 1964 to 1994) to compare flooding in the study area with soybean and cotton production. It found that **“no factor associated with flood events adversely influence production of cotton and soybeans.** However, with regard to soybeans, the amount of area flooded two years prior to a crop was positively related to soybean yield. **From a long-term perspective therefore, the data suggest that flooding may benefit agricultural enterprises associated with soybean production.”**<sup>403</sup> The study also found that **cotton yield was positively correlated with maximum area flooded during the same year**, noting that this was

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<sup>401</sup> Leonard Shabman & Laura Zepp Review Comments on “Yazoo Backwater Reformulation” dated September 24, 2000; *see also* Leonard Shabman & Laura Zepp, An Approach for Evaluating Nonstructural Actions with Application to the Yazoo River (Mississippi) Backwater Area (February 7, 2000) (prepared in cooperation with the U.S. Environmental Protection Agency, Region 4). Both of these documents were submitted with the Environmental Protection Agency Comments on the 2007 Draft SEIS.

<sup>402</sup> Jackson, D. C. and Q. Ye. 2000. Riverine fish stock and regional agronomic responses to hydrologic and climatic regimes in the upper Yazoo River basin. Pages 242-257 in I. G. Cowx, Editor. Management and Ecology of River Fisheries. Fishing News Books. Blackwell Science. London. This study was submitted into the record for the veto process on May 5, 2008.

<sup>403</sup> *Id.* (emphasis added).



likely due to increased soil moisture which benefits cotton production. This was true even though floods resulted in fewer acres of cotton being planted during flood years.<sup>404</sup>

The study did note, however, that a different pattern appeared to emerge over shorter time periods “which may explain the public perception that flooding adversely impacts agriculture in the area. During the 5 year period from 1990-1994, high precipitation was negatively related to area planted in cotton and the percent of the area planted in soybeans that was actually harvested. However, flooding during this period did not significantly affect overall yield of cotton and soybeans.”<sup>405</sup> And again, there was a positive correlation between cotton yields and the maximum area flooded during the same year.

That same study also shows that flooding benefits fisheries in the area, finding a positive relationship between flooding and positive fish stock characteristics, which the study defines as more and bigger fish. The study also noted that much of the productive potential for fisheries in floodplain river ecosystems is determined by the dynamics of overbank flooding and riparian vegetation.<sup>406</sup>

- (3) The ability to plant crops even during years with large flood events. Even during the prolonged 2019 flood event, 316,000 acres of crops were grown in the Yazoo Backwater Area (more than 55% of the 10-year average acreage of crops grown in the Yazoo Backwater Area), according to USDA data.<sup>407</sup> In addition, the Conservation Organizations understand that farmers were eligible to receive disaster relief or other forms of compensation to minimize economic losses due to the inability to plant crops on the Yazoo Backwater Area lands that could not be planted as a result of the 2019 flood event.

In 2008, then Mississippi Governor Haley Barbour stated on Mississippi Public Radio that even during the 100-year flood of 1973, farmers had good soybean crops. Indeed, we understand that many farmers prefer to plant after floods because it is cheaper to do so. Post-flood planting reduces the amount of chemicals that must be applied to the land to clear the fields, and reduces the amount of fertilizer needed due to the nutrients provided by the flooding.

- (4) A full assessment of documentation demonstrating the amount of uninsured and/or unsubsidized crop losses per year for each farm in the Yazoo Backwater Area, and the elevation of lands on which the lost crops were planted. Only uninsured losses that could be reduced by operation of the Yazoo Pumps should be accounted for in the benefits assessment.
- (5) A full assessment of farm subsidy payments in the Yazoo Backwater Area to assess whether additional subsidies to intensify agricultural production are in fact necessary or an appropriate investment of federal taxpayer dollars. As the Corps is aware, an

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<sup>404</sup> Id.

<sup>405</sup> Id.

<sup>406</sup> Id.

<sup>407</sup> USDA National Agricultural Statistics Service, CropScape Cropland Data Layer.



extensive and independent economic review determined that the Yazoo Pumps would do nothing more than “**help landowners grow crops on land that is farmed only to earn farm subsidy payments,**” based on the economic data used by the Corps in the 2007 SEIS.<sup>408</sup> That review also determined that the Yazoo Pumps could not be economically justified even at what was then a \$207 million projected construction cost.<sup>409</sup>

- (6) A full assessment of farm ownership in the areas of the Yazoo Backwater Area that would be able to intensify agricultural production due to operation of the Yazoo Pumps, to ensure that the concentration of benefits warrants the large investment of federal taxpayer dollars that would be required to construct and operate the Pumps. The 2007 FSEIS noted that there were only 192 farms in the project area with an average size of 2,913 acres.<sup>410</sup> The 2007 FSEIS did not provide any information on the elevation of those farms, so it was not possible to assess what percentage of the total farms in the project area might allegedly benefit from the Yazoo Pumps. The FSEIS also did not provide farm ownership information, so it is was possible to discern whether some landowners or corporations own multiple farms in the project area.
- (7) A full assessment of farm elevations in the Yazoo Backwater Area, to ensure that only those farms in areas that could see reduced flood inundation are accounted for in the benefits analysis, and to ensure that no benefits are counted for farms lying being the 90-foot elevation since the Yazoo Pumps authorization does not authorize pumping below the 90-foot elevation.

#### d. Flood Damage Reduction Benefits—Homes, Businesses, Structures

In assessing flood damage reduction benefits to homes, businesses, and other structures, the DSEIS should utilize an up-to-date inventory of all structures and roads in the Yazoo Backwater Area that provides precise elevation data. The DSEIS should also ground-truth its quantification of flood damage reduction benefits, including by comparing the predicted benefits with the limited, and highly concentrated, structural damage incurred during the 2019 flood.

Before assessing potential flood damage reduction benefits for the Eagle Lake Community, the Corps should conduct a detailed after-action assessment of the cause of the 2019 Eagle Lake area flooding. Factors that likely influenced the 2019 flooding of homes near Eagle Lake include the Lake’s water control management regime and actions associated with maintaining the stability of the portion of the Mississippi River mainline levee that abuts Eagle Lake. If these factors played a role in the flooding surrounding Eagle Lake, it is likely that the area would have flooded in 2019 even if the Yazoo Pumps were in operation. The multiple risk factors facing Eagle Lake must be accounted for when calculating any flood damage reduction benefits for the Yazoo Pumps.

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<sup>408</sup> Leonard Shabman & Laura Zepp Review Comments on “Yazoo Backwater Reformulation” dated September 24, 2000 (emphasis in original); see also Leonard Shabman & Laura Zepp, An Approach for Evaluating Nonstructural Actions with Application to the Yazoo River (Mississippi) Backwater Area (February 7, 2000) (prepared in cooperation with the U.S. Environmental Protection Agency, Region 4). Both of these documents were submitted with the Environmental Protection Agency Comments on the 2007 Draft SEIS.

<sup>409</sup> Id.

<sup>410</sup> 2017 FSEIS Main Report at 24.



The DSEIS should also ensure that it does not overstate potential benefits as it clearly did in the 2007 FSEIS. Some of the most egregious examples of these overstatements include:

- Flood damage reduction benefits – automobiles. The 2007 FSEIS claims that the average household in the project area has two automobiles valued at \$15,000 per car. The Corps says that despite the low velocity flooding typical in the study area that about 1/3 of these cars will get flood damages estimated at \$298,000 per year. These estimates make no sense given the economics in the project area. At the time these values were assessed, the average per capita income in Sharkey and Issaquena counties was \$11,187, and one third of the population lived below the poverty level. Median household income was approximately \$20,000 to \$22,000 depending on the county. Based on these economic realities, it is highly unlikely that each home would have two cars valued at \$15,000 sitting in the driveway, or that if this were the case, it is even more unlikely that the owners would not simply drive their cars to higher ground during the typical slow-moving flood event.
- Flood damage reduction benefits – home values. The Corps bases its flood damage reduction benefits on inflated home values in the region, which in turn inflates flood damage reduction benefits for contents of homes (see below). The 2007 FSEIS asserts that the average residential home in the project area is valued at \$44,000 based on data collected by a local contractor from 2000-2005.<sup>411</sup> This contrasts considerably with data that the Corps supplied to Dr. Shabman and Laura Zepp in 2000. In 2000, the Corps identified residential one-story building average values at \$22,405. Accuracy in the valuation of homes is particularly important in calculating flood damages in this case because the estimate of contents damage is directly correlated to property value.
- Flood damage reduction benefits – home contents. For one- and two-story homes in the project area, the Corps assumed that contents are equal to 100 percent of the home value, and for mobile homes the Corps assumes that contents are equal to 50 percent of the structure's value. Given the lower average income levels that exist in the project area counties, these assumptions would appear to have overstated potential damages, and failed to correlate with the experience of the National Flood Insurance Program.

#### e. Benefits of Nonstructural, Natural, and Nature-Based Measures

The many flood damage reduction benefits (and the cost-effectiveness) of nonstructural, natural, and nature-based measures must be fully accounted for to ensure proper assessment of these approaches.

There are extensive, and well-established tools for the assessing ecosystem services provided by healthy natural systems, and these should be used by the Corps in developing the SEIS. A Duke University, Nicholas Institute report *Valuing Ecosystem Services from Wetland Restoration in the Mississippi Alluvial Valley* is provided with the Conservation Organizations Scoping Comments. An Earth Economics report *The Value of Restoring the Mississippi River Delta* is provided with the Conservation Organizations Scoping Comments. The Conservation Organizations will supply additional ecosystem services valuation studies upon request. In addition to fully accounting for the ecosystem service values, the DSEIS should also account for benefits associated with avoiding flood-fighting costs, the additional cost avoidance

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<sup>411</sup> 2007 FSEIS, Appendix 7 at 77.



benefits discussed below, and National Flood Insurance Rate reduction benefits when assessing the benefits of these measures.

- **Cost Avoidance Benefits:** Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. A recent study documents these avoidance benefits (present value of avoided costs less the Wetlands Reserve easement and restoration costs) in Mississippi at \$870 per acre. *Wetland Reserve Easement Program Economic Assessment: Estimated Commodity Program and Crop Insurance Premium Subsidy Cost Avoidance Benefits*, prepared for the Nature Conservancy (June 2, 2018) (authored by retired U.S. Department of Agriculture economist Dr. Doug Lawrence).
- **National Flood Insurance Program Rate Reductions:** Protecting floodplains has the largest impact on lowering National Flood Insurance Program (NFIP) rates for communities participating in the voluntary Community Rating System Program (CRS). Participation in the CRS can reduce NFIP rates from 15% to 45%. The CRS credits over 90 elements of comprehensive floodplain and watershed management, including providing significant credits for protecting the natural functions of riverine floodplains by preserving natural floodplain open space, acquiring flood-prone land and returning it to its natural state, and protecting and restoring natural floodplain functions and habitat.<sup>412</sup>

#### G. The DSEIS Violates NEPA Because it Lacks Scientific Integrity

"Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."<sup>413</sup> Accordingly, the DEIS must be based on "high quality" science and information and the Corps must "insure professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements."<sup>414</sup> Importantly, if information that is essential for making a reasoned choice among alternatives is not available, the Corps **must** obtain that information unless the costs of doing so would be "exorbitant."<sup>415</sup>

An EIS must utilize "quantified or detailed information" when analyzing impacts.<sup>416</sup> The DEIS may not rely "on conclusory statements unsupported by data, authorities, or explanatory information."<sup>417</sup> Accordingly, the DEIS must supply supporting data and authorities, and explain how and why it has drawn the conclusion it has reached.

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<sup>412</sup> Federal Emergency Management Agency Fact Sheet, *The Community Rating System works to Protect Natural Floodplains* (2015) (available at <https://www.fema.gov/media-library-data/1459276443255-663d02584edc3ac6cda2f4a7f337100b/Natural-Functions-and-CRS.pdf>).

<sup>413</sup> 40 C.F.R. § 1500.1(b).

<sup>414</sup> 40 C.F.R. § 1502.24 ("Agencies shall insure professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements"); *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1159-60 (9<sup>th</sup> Cir. 2006) (quoting 40 CFR §1502.24).

<sup>415</sup> 40 C.F.R. § 1502.22.

<sup>416</sup> *Neighbors of Cuddy Mountain v. U. S. Forest Service*, 137 F.3d 1372, 1379 (9<sup>th</sup> Cir. 1998); *Ecology Center v. Castaneda*, 574 F.3d 652, 666 (9<sup>th</sup> Cir. 2009) (requiring "quantified or detailed data"); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 87 (2<sup>d</sup> Cir. 1975).

<sup>417</sup> *Id.*



The Corps must also candidly disclose the risks of its proposed action and respond to adverse opinions held by respected scientists:<sup>418</sup>

Where scientists disagree about possible adverse environmental effect, the EIS must inform decision-makers of the full range of responsible opinion on the environmental effects.’ Where the agency fails to acknowledge the opinions held by well respected scientists concerning the hazards of the proposed action, the EIS is fatally deficient.<sup>419</sup>

It is not sufficient to include the statements of the well-respected scientists in an Appendix or some other document, the expert comments must be included and appropriately responded to in the impacts section of the DSEIS.<sup>420</sup>

The DSEIS falls woefully short of meeting these longstanding NEPA requirements, as discussed throughout these comments and as made clear by the following three examples.

First, the DSEIS repeatedly relies on scientific methodologies and approaches decisively rejected by EPA in the veto, as discussed throughout these comments. However, the DSEIS does not even reference—let alone address—the detailed findings outlining the significant problems with those methodologies prepared by EPA experts. Indeed, the DSEIS and Appendices make just three passing references to the veto that do nothing more than acknowledge that it was issued.<sup>421</sup>

Second, the DSEIS appears to be modeling across non-equivalent elevation datum. Over time, sea level changes, ground subsidence, and uplift, coupled with more sensitive measuring technology has led to adjustments in elevations. The modern standard elevation unit, used by the Corps National Levee Database and Flood Insurance Rate Maps, is 1988 North American Vertical Datum (NAVD88). Older elevation data is typically based on the 1929 National Geodetic Vertical Datum (NGVD29). These elevation baselines can deviate by as much as 30 feet throughout North America and require conversion.

In the Yazoo Backwater Area region, most NAVD88 elevations are between 0.0 inches and 7.87 inches below the NGVD29 elevations, on average.<sup>422</sup> However, the DSEIS appears to apply data from at least three datums as if they are equivalent. For example, the DSEIS variously states that pumps would turn

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<sup>418</sup> Seattle Audubon Soc’y v. Mosely, 798 F.Supp. 1473, 1482 (W.D. Wash. 1992) (citing Friends of the Earth v. Hall, 693 F.Supp. 904, 934, 937 (W.D.Wash. 1988)).

<sup>419</sup> Friends of the Earth v. Hall, 693 F. Supp. 904, 934 (W.D. Wash. 1988)(citations omitted).

<sup>420</sup> *Id.*

<sup>421</sup> DSEIS at 14 (“No Record of Decision was signed due to the EPA vetoing the project in August 2008 under Section 404(c) of the Clean Water Act (CWA) citing ‘adverse impacts on wetlands and their associated fisheries and wildlife resources are unacceptable.’”); DSEIS at 18 (“The 2007 Main Report had been finalized prior to 2008 when EPA indicated it would exercise a veto of the document citing concerns related to Section 404(c) of the CWA and unacceptable effects on fishery areas and wildlife.”); DSEIS, Appendix F-4 (HTRW) at 2 (“No Record of Decision (ROD) was signed due to the U.S. Environmental Protection Agency (EPA) vetoing the 2007 Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (2007 FSEIS) in August 2008 due to ‘adverse impacts on wetlands and their associated fisheries and wildlife resources are unacceptable’ citing Section 404(c) of the Clean Water Act.”)

<sup>422</sup> NOAA National Geodetic Survey. <https://geodesy.noaa.gov/TOOLS/Vertcon/vertcon.html> accessed November 18, 2020.



on at 87.0 feet (NGVD29)<sup>423</sup>, at 87.0 feet (NAVD88)<sup>424</sup>, and when water levels reach 87.0-foot Mean Sea Level (MSL).<sup>425</sup> These elevations are not equivalent. The DSEIS also fails to clearly identify the elevation datum in a number of tables and figures.<sup>426</sup> The DSEIS does not state whether or not the various elevations were converted to equivalent units.<sup>427</sup>

Use of these non-equivalent elevation datum call into question the results of critical calculations in the DSEIS. These include calculations regarding: the number of days the pumps could have been or will be in use during backwater flood events; adjustments to the flood frequency elevations and the spatial extent of the 2-year floodplain, which the Corps uses to determine wetlands impacts; and the calibration of all the Corps' models.

To ensure the accuracy of these calculations, the Corps should convert all elevation datum to NAVD88. Converting to NAVD88 would also provide the flood stage elevations in units that could be compared to elevation data in the National Levee Database and the Flood Insurance Rate Maps, which is essential for understanding downstream flood impacts and any potential impacts to flood insurance rates in the Yazoo River floodplain and backwater area.

Third, as discussed in Section C of these comments, the DSEIS dismisses significant concerns regarding the Proposed Plan's potential to increase flood risks for communities and businesses by relying on a model that is so unreliable that it "cannot be trusted to get a correct answer" regarding the impact of the Yazoo Pumps on flood levels in the Yazoo River. The Corps also mischaracterizes the findings of that flawed model. A detailed review of this model, which was carried out by William Fleenor, Ph.D., an expert with more than 25 years of experience with hydrologic modeling, is provided at Attachment E these comments.

The risks associated with this flawed model are significant. An accurate understanding of the Proposed Plan's impact on stage levels in the Yazoo River is critical to knowing whether operation of the Pumps would increase flood levels in the Yazoo River, which would: increase the risks to the integrity of the Yazoo Backwater Levee; affect communities and business located along the Yazoo River, including communities in north Vicksburg that already suffer from excessive flooding; and risk inundating the International Paper wastewater treatment ponds which would release significant amounts of toxic wastewater into the Yazoo River.

Fourth, in addition to these substantive errors, the Corps hindered the public's ability to meaningfully comment on the DSEIS by withholding critical data. For example, the Corps did not provide the public with the purportedly new "environmental data" underlying the DSEIS, contradicting its obligation and promise to provide that information.<sup>428</sup> Furthermore, the Corps failed to provide critical documents and

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<sup>423</sup> DSEIS, Appendix G (Engineering) at 48, paragraph 56.

<sup>424</sup> DSEIS, Appendix G (Engineering) at 55, paragraph 63.

<sup>425</sup> DSEIS Appendix G (Engineering) at 93, Table 2-21.

<sup>426</sup> The following figures and tables in Appendix G (Engineering) do not include properly labeled elevation datum units: Figures 2-101 – 2-104, Figures 2-53 – 2-58, Figures 2-71 – 2-82, Table 2-16, Tables 2-22 – 2-25.

<sup>427</sup> DSEIS Para. 18 lists the updated data collected for the 2020 DSEIS, including new elevation data. But fails to clarify whether the new elevation data was based on the NAVD88 datum or the NGVD29 datum. It also does not mention whether the Corps converted any non-equivalent elevation datum.

<sup>428</sup> See 33 U.S.C. § 2342 (emphasis added) (the "Secretary *shall* make publicly available, including on the Internet, all data in the custody of the Corps of Engineers on . . . the planning, design, construction, operation, and maintenance of water resources development projects . . . *as quickly as practicable* after the data is generated by



analysis regarding the Proposed Plan.<sup>429</sup> When the Conservation Organizations promptly requested the missing data on October 26, 2020,<sup>430</sup> the Corps needlessly denied that request and continued to withhold the data contained in its own files.<sup>431</sup> The agency's noncompliance forced the Conservation Organizations to file an additional Freedom of Information Act request.<sup>432</sup> Even then, the Corps did not produce any data until November 13, 2020—an inexcusable delay of over four weeks since the start of the comment period. As a result, the Corps deprived the Conservation Organizations and the public of its right to analyze that data and provide critical feedback to the Corps regarding the flaws in its analysis. The Corps also failed to provide the public with a meaningful public hearing and failed to respond to critical questions regarding the proposed project.<sup>433</sup> The Conservation Organizations thus requested a 30-day extension of the comment period so that they could meaningfully analyze the data and assist the Corps in correcting its flawed DSEIS.<sup>434</sup> The Corps did not respond to this reasonable request.

#### H. The DSEIS Violates Mandatory Mitigation Requirements and NEPA Because it Does Not Properly Evaluate Needed Mitigation and Does Not Include a Detailed Mitigation Plan

The DSEIS violates the mandatory mitigation requirements established by 33 U.S.C. § 2283 and the Clean Water Act, including the requirement to develop a detailed mitigation plan. The DSEIS also violates NEPA's requirement to analyze mitigation measures with "sufficient detail to ensure that environmental consequences have been fairly evaluated."<sup>435</sup>

Notably, the DSEIS repeats many of the same mitigation errors documented by EPA in the 2008 veto, including the wholesale failure to identify specific mitigation sites, provide a detailed mitigation plan, or ensure an adequate amount of compensatory mitigation. The DSEIS also fails to address how the promised mitigation can be achieved on lands that will themselves be adversely affected by the Yazoo Pumps.<sup>436</sup>

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the Corps of Engineers.").

<sup>429</sup> The Corps did not provide any alternatives analysis, as required by the law. The Corps did not include any information on the costs or benefits of the Yazoo Pumps, despite its obligation to do so. The Corps did not provide the required Endangered Species Act assessments or Fish and Wildlife Coordination Act report, both of which would have provided valuable insight from the nation's fish and wildlife experts. The Corps does not include a report—or account for the findings of—an Independent External Peer Review panel. The Corps did not even provide a complete analysis of the proposed pumps' significant, unacceptable impacts on the region's rich array of wetlands, streams, aquatic resources, and wildlife.

<sup>430</sup> See Letter from Stuart Gillespie to Col. Hilliard, Re: Data Request Pursuant to 33 U.S.C. § 2342—Yazoo Area Pump Project Draft SEIS 2 (Oct. 26, 2020).

<sup>431</sup> See Letter from David R. Dryer to Stuart Gillespie, Re: Data Request by Earthjustice—Yazoo Area Pump Project Draft SEIS 2 (Oct. 30, 2020).

<sup>432</sup> Letter from Stuart Gillespie to FOIA Officer, Re: Freedom of Information Request—Yazoo Area Pump Project Draft SEIS 2 (Nov. 2, 2020); see also Letter from Stuart Gillespie to Col. Hilliard, Re: Data Request Pursuant to 33 U.S.C. § 2342—Yazoo Area Pump Project Draft SEIS 2 (Nov. 2, 2020).

<sup>433</sup> Letter from Stuart Gillespie to Col. Hilliard, Re: Request for Extension of Public Comment Period—Yazoo Area Pump Project Draft SEIS 2 (Nov. 19, 2020), at 2.

<sup>434</sup> *Id.*

<sup>435</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

<sup>436</sup> The Conservation Organizations also note that each page of the Mitigation Appendix released for public comment includes a "DRAFT" watermark. As a result, the public has no way of knowing whether this Mitigation Appendix is in fact the one that the Corps intended to release for public comment.



The DSEIS must ensure mitigation for all losses to fish and wildlife created by a project unless the Secretary determines that the adverse impacts to fish and wildlife would be “negligible.”<sup>437</sup> In carrying out this mitigation, “impacts to bottomland hardwood forests are mitigated in-kind and harm to other habitat types are mitigated to not less than in-kind conditions, to the extent possible.”<sup>438</sup> The DSEIS must include a “specific plan to mitigate fish and wildlife losses” and the Corps is prohibited from selecting a “project alternative in any report” unless that report includes the required specific mitigation plan.<sup>439</sup>

The DSEIS must also comply with “the mitigation standards and policies established pursuant to the regulatory programs” administered by the Corps.<sup>440</sup> To meet these standards, the mitigation must compensate for the aquatic resource functions that will be lost to the project; “must be commensurate with the amount and type of impact” caused by the project; and must satisfy many other critical requirements.<sup>441</sup>

Mitigation lands for the Proposed Plan must be purchased before any construction begins.<sup>442</sup> Any physical construction required for purposes of mitigation should also be undertaken prior to project construction but must, at the latest, be undertaken “concurrently with the physical construction of such project.”<sup>443</sup> Corps mitigation must be monitored until the monitoring demonstrates that the ecological success criteria established in the mitigation plan have been met.<sup>444</sup>

NEPA requires that the DSEIS discuss mitigation measures “in sufficient detail to ensure that environmental consequences have been fairly evaluated.”<sup>445</sup> A “perfunctory description” of the mitigating measures is not sufficient.<sup>446</sup> As the Supreme Court has noted, this is because:

omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects. An adverse effect than can be fully remedied by, for example, an inconsequential public expenditure is certainly not as serious as a similar effect that can only be modestly ameliorated through the commitment of vast public and private resources.<sup>447</sup>

The DSEIS also must discuss the effectiveness of the proposed mitigation:

“An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental

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<sup>437</sup> 33 U.S.C. § 2283(d)(1).

<sup>438</sup> 33 U.S.C. § 2283(d)(1).

<sup>439</sup> 33 U.S.C. § 2283(d)(1).

<sup>440</sup> 33 U.S.C. § 2283(d).

<sup>441</sup> 33 C.F.R. § 332.3(a).

<sup>442</sup> 33 U.S.C. § 2283(a).

<sup>443</sup> 33 U.S.C. § 2283(a).

<sup>444</sup> 33 U.S.C. § 2283(d).

<sup>445</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

<sup>446</sup> *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir.1998).

<sup>447</sup> *Id.*



impacts can be avoided. A mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.”<sup>448</sup>

This should include a discussion of how the mitigation will effectively address temporal losses (i.e., it takes many years to restore a fully functioning, mature wetland and many decades to restore a fully functioning mature bottomland hardwood wetland forest), and how mitigation for wetland losses can be effectively carried out in areas drained by the Yazoo Pumps. A bald assertion that mitigation will be successful is not sufficient. The effectiveness must instead be supported by “substantial evidence in the record.”<sup>449</sup>

A discussion of the effectiveness is particularly critical because, despite progress in this area, wetland and stream mitigation often fails or does not fully replace lost ecological values. For example, the National Research Council has concluded:

“Attempts to restore forested wetlands of the Southeast (e.g., bottomland hardwoods and cypress swamps) have encountered difficulties related to the time required to replace mature trees, the lack of material to transplant, the lack of knowledge of how and when to carry out seeding or transplantation, (Clewell and Lea, 1989) and altered hydrology (drainage for conversion to agriculture) of the wetland area. Natural forested wetlands may support hundreds of plant species, many of which thrive in the understory (91 percent of 409 species in one riverine forest were understory species). Old-growth forests are dominated by trees that gradually achieve a dominant role in the canopy and that are self-sustaining through their ability to reproduce in their own shade. It is not clear that such climax species can be successfully established in open sites, or whether their introduction must await development of seral (intermediate successional stage) plant communities. Clewell and Lea (1989) noted the need for intensive site preparation to reduce competition between weeds and transplanted tree seedlings. Their review was the first to mention insect herbivory and fire as potential problems. In many cases, restoration of suitable hydrologic conditions will be necessary. The short time period within which forest restoration attempts have been monitored precludes an evaluation of their functional equivalency with natural reference systems.”<sup>450</sup>

Absent a meaningful discussion of the effectiveness of the proposed mitigation, the DSEIS will not have taken the mandated “hard look” at the environmental impacts of the proposed action and alternatives to the action, and will fail to provide “a clear basis for choice among options by the decisionmaker.”<sup>451</sup>

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<sup>448</sup> South Fork Band Council v. Dept. of Interior, 588 F.3d 718, 727 (9th Cir. 2009) (internal citations omitted).

<sup>449</sup> Wyoming Outdoor Council v. U.S. Army Corps of Eng’rs, 351 F. Supp. 2d 1232, 1252 (D. Wyo. 2005).

<sup>450</sup> National Research Council, Restoration of Aquatic Ecosystems: Science, Technology, and Public Policy (1992) at 311-12.

<sup>451</sup> 40 C.F.R. § 1502.14.



## 1. The DSEIS Does Not Accurately Assess Mitigation Needs

As discussed throughout these comments, the DSEIS does not properly evaluate the adverse impacts of the Yazoo Pumps on the project area's hemispherically significant wetlands; does not evaluate adverse impacts to the many streams in the project area; does not evaluate the impacts of massive reductions in flood stages in the project area; and does not properly evaluate adverse impacts to the fish and wildlife resources that rely on those vital systems, among many other failings. The DSEIS "cannot reliably conclude that the selected project has minimized adverse impacts on aquatic ecosystems to the extent practicable when its habitat mitigation calculations are infected with an underestimate of the floodplain habitat impacted."<sup>452</sup> As a result, the DSEIS does not propose adequate amounts of compensatory mitigation to offset the project's significant and unacceptable impacts.

The Conservation Organizations also note that the 2007 Yazoo Pumps EIS included 4,367 acres of mitigation for previously constructed projects in the Yazoo Pumps project area—3,848 acres of mitigation for the previously constructed Yazoo Area and Satartia Area Backwater Levee Projects and 519 acres of mitigation for past work at the Steele Bayou pump station site—in addition to the 10,662 acres of mitigation that the Corps said was required to compensate for the direct and indirect impacts of the proposed Yazoo Pumps in 2007.<sup>453</sup> The 2020 DSEIS makes no reference to addressing (or having completed) the needed mitigation for these previously constructed projects. It is critical that these adverse impacts be fully mitigated through mitigation that properly accounts for the temporal habitat losses that occurred between the time of construction and any future mitigation.

## 2. The Mitigation Proposed in the DSEIS Will Not Offset the Significant Adverse Impacts that Are Identified in the DSEIS

The DSEIS proposes two mitigation components that will not offset even the severe underestimate of 38,744 acres of wetlands impacts identified in the DSEIS, let alone offset the full suite of significant adverse impacts caused by the Proposed Plan.

The first component of the proposed mitigation consists of 2,405 acres of reforestation of unidentified flooded lands, which the DSEIS claims will replace the significant wetland functions lost to the Proposed Plan. The second out-of-kind component consists of the installation of 34 groundwater wells far outside of the project area that will operate "during the low water season" in a counter-productive attempt to offset flood-related hypoxia problems that are not created by the Yazoo Pumps. DSEIS at 26.

### a. The Proposed Reforestation at Unidentified Locations Will Not Offset the Significant Adverse Impacts of the Proposed Plan

At the most foundational level, it is clear that the conceptual mitigation plan in the DSEIS is inadequate to offset the "unavoidable adverse impacts to wetlands, terrestrial, aquatic, and waterfowl resources."<sup>454</sup> As detailed in Section F.1 of these comments, the DSEIS arbitrarily constrains its analysis to exclude impacts to thousands of acres of wetlands that flood for less than 14 days or are located above the 2-year floodplain. As a result, the DSEIS proposes no mitigation measures to offset the Proposed Plan's impacts on these critical resources. This is a glaring omission. For example, as

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<sup>452</sup> *Env'tl. Def.*, 515 F. Supp. 2d at 83.

<sup>453</sup> Yazoo Backwater Area Reformulation Main Report, October 2007 at 138-140.

<sup>454</sup> DSEIS at 21.



explained by EPA, short hydroperiod wetlands provide critical fish spawning habitat, which “is the controlling resource for this project (i.e., the resource which suffers the greatest loss and requires the greatest amount of compensatory mitigation).”<sup>455</sup>

The DSEIS then compounds this threshold error by deriving the amount of needed mitigation through a fundamentally flawed functional assessment that obscures the loss of critical wetland functions, aquatic resources, and waterfowl habitat, as documented by EPA and detailed in Section F.1 of these comments.<sup>456</sup> Based on this flawed analysis, the DSEIS concludes that:

Indirect impacts to wetlands are associated with changes in flood duration levels under the Proposed Plan; these impacts will result in a loss of 11,054 AAFCUs. The impacts, both direct and indirect cumulatively, require establishment of 2,405 acres of reforested compensatory mitigation lands.

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Based on these calculations it was determined that the acquisition of 2,405 acres of frequently flooded agricultural lands in fee title and subsequent reforestation of these lands would be pursued to offset any unavoidable losses to wetlands, terrestrial, wildlife, waterfowl, and a portion of the aquatics resources.<sup>457</sup>

As discussed in Section F.1 of these comments, the functional assessment that forms the basis of the mitigation proposal was decisively rejected by EPA in the 2008 veto precisely because it did not—and could not—properly account for the ecological implications of the Yazoo Pumps-induced wetland losses. This functional assessment dramatically understates the functions and values lost in the severe underestimate of 38,744 acres of wetland impacts acknowledged in the DSEIS. As a result, the proposed mitigation that is based on replacing these lost functions will not even offset the actual functional losses for the severely understated acreage impacts acknowledged in the DSEIS.

The DSEIS exacerbates these critical errors by failing to identify specific mitigation sites, in direct violation of 33 U.S.C. § 2283 and the 404(b)(1) Guidelines. As set forth at 40 C.F.R. § 230.93(d), the Corps needs to identify mitigation sites so that it can determine whether the sites are “ecologically suitable for providing the desired aquatic resource function.”<sup>458</sup> The Corps must then evaluate the sites’ characteristics—such as hydrology, soils, and habitat connectivity<sup>459</sup>—so that it can ensure the proposed mitigation will successfully replace “the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project.”<sup>460</sup>

EPA underscored the importance of identifying mitigation sites in its veto, explaining that site-specific information is essential to the comparison of pre-project conditions and post-project conditions “on both the impact site and the proposed compensatory mitigation site.”<sup>461</sup> Due to the Corps’ failure to

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<sup>455</sup> Clean Water Act 404(c) Final Determination at 56 (emphasis added).

<sup>456</sup> See Clean Water Act 404(c) Final Determination Appx. 8 at 4.

<sup>457</sup> DSEIS at 73 and 80.

<sup>458</sup> 40 C.F.R. § 230.93(d)(1).

<sup>459</sup> *Id.* § 230.93(d)(1)(i)-(vi).

<sup>460</sup> *Id.* § 293.93(f)(2).

<sup>461</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 2.



provide that information, “it is not possible to determine that the potential adverse environmental impacts of a project would be successfully minimized and compensated for to avoid significantly degrading the Nation’s waters.”<sup>462</sup> Accordingly, EPA rejected the Corps’ unidentified reforestation measures in the veto. Yet, the Corps simply repeats this very same flaw in the DSEIS, rendering its analysis arbitrary, capricious, and contrary to the 404(b)(1) Guidelines once again.<sup>463</sup>

Specific mitigation sites must be identified because mitigation can only be credited towards increases in functional values beyond the baseline condition at the mitigation site. According to the DSEIS, lands targeted for restoration will have hydric soils and may be frequently flooded, which means that they will have baseline wetland functional values that cannot be counted towards the mitigation benefits. Without identifying specific mitigation sites, it simply is not possible to determine how many acres of mitigation are required to replace the functions lost to the Proposed Plan. Specific mitigation sites also must be identified to comply with both the statutory and regulatory mitigation planning requirements discussed below.

As a result, the DSEIS fundamentally fails to ensure that the unidentified reforestation is “sufficient to replace lost aquatic resource functions.”<sup>464</sup> To the contrary, the DSEIS demonstrates that the proposed reforestation is in fact not sufficient to replace these vital functions for at least the following reasons.

First, as explained by EPA in the veto and as acknowledged by the Corps’ own HGM Approach, wetlands in the Yazoo Backwater Area perform at least eight distinct functions.<sup>465</sup> For example, during backwater flooding, riverine wetlands export organic carbon to downstream aquatic systems—a “critical function” for aquatic food webs.<sup>466</sup> Riverine wetlands also detain precipitation—a distinct function that operates “independent of the influence of flooding” and helps prevent erosion and reduce peak runoff.<sup>467</sup> Each of the eight wetland functions perform unique roles in maintaining the integrity of the Yazoo Backwater Area’s aquatic ecosystem.<sup>468</sup> Accordingly, as explained by EPA in the Veto, “appropriate compensatory mitigation would be that which restores at least the baseline level of all functions.”<sup>469</sup>

The DSEIS, however, fails to ensure that the proposed mitigation will restore the baseline levels of all functions because it improperly conflates the unique wetland functions to obscure the significant losses of individual functions. In the DSEIS, the Corps calculates the Proposed Plan’s impacts on each wetland function, but then combines these distinct losses into a single, composite number: 11,498 AAFCUs.<sup>470</sup>

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<sup>462</sup> Clean Water Act 404(c) Final Determination at 61.

<sup>463</sup> See *All. to Save the Mattaponi v. U.S. Army Corps of Engineers*, 606 F. Supp. 2d 121, 133 (D.D.C. 2009) (“In addition, the Corps does not address comments that without more site-specific information it is impossible to determine whether the Mitigation Plan will replace functional values to the point where the Project does not cause or contribute to significant degradation.”).

<sup>464</sup> 40 C.F.R. § 293.93(f)(2).

<sup>465</sup> Clean Water Act 404(c) Final Determination at 28; Smith and Klimas (2002) at 47.

<sup>466</sup> Clean Water Act 404(c) Final Determination at 29-30; *see also* Smith and Klimas at 56 (“This function is defined as the capacity of the wetland to export dissolved and particulate organic carbon, which may be vitally important to downstream aquatic systems.”).

<sup>467</sup> Smith and Klimas (2002) at 52.

<sup>468</sup> *Id.* at 47-67 (detailing each distinct wetland function).

<sup>469</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 2. This requirement is particularly important in light of the National Research Council’s finding that “wetland area and particularly wetland functions were not being replaced by compensatory mitigation projects.” Clean Water Act 404(c) Final Determination Appx 8 at 5.

<sup>470</sup> DSEIS F-5 (Wetlands) at Table 80; The term “AAFCUs” stands for “Average Annual Functional Capacity Units.”



The DSEIS then asserts that it can offset that composite number with 2,405 acres of reforestation.<sup>471</sup> But this generic analysis obscures a glaring mismatch between the Proposed Plan's impacts on certain wetland functions and the proposed reforestation, which does not mitigate those lost functions.

As shown by the Corps' own data and confirmed by EPA in the veto, the Yazoo Pumps significantly degrade three hydrologically-driven wetland functions: Export Organic Carbon, Physical Removal of Elements and Compounds, and Biological Removal of Elements and Compounds.<sup>472</sup> But the proposed reforestation provides almost no compensation for these lost functions<sup>473</sup>—a clear discrepancy that exposes the flaws in the DSEIS analysis and the inadequacies in the proposed mitigation.<sup>474</sup> See Section F.1 of these comments for additional information.

In fact, data provided in the DSEIS exposes the shortcomings in the proposed reforestation. According to the data, 2,405 acres of reforestation would generate 813 functional units of organic carbon export.<sup>475</sup> The Proposed Plan, however, would eliminate 3,588 functional units of organic carbon export.<sup>476</sup> To offset the loss of this critical function, the DSEIS would have to provide at least 10,641 acres of reforestation, over four times the amount proposed in the DSEIS.<sup>477</sup>

Second, the DSEIS relies on an internally inconsistent analysis to avoid its obligation to offset the Proposed Plan's significant impacts on fish spawning and rearing habitat.<sup>478</sup> The DSEIS states that the Proposed Plan would eliminate 2,838 and 3,232 average annual habitat units (AAHUs) for spawning and rearing, respectively.<sup>479</sup> The DSEIS then estimates that the reforestation of one acre of agricultural land would generate 0.71 AAHUs, assuming "full functional value" for that restored habitat.<sup>480</sup> Accordingly, the DSEIS concludes that 4,553 acres of reforestation are required to "fully mitigate" the Proposed Plan's impacts to rearing habitat (which are significantly underestimated).<sup>481</sup>

The DSEIS attempts to escape that obligation, however, through an "internally inconsistent" and self-serving analysis, which "used discounted habitat quantity values for habitat loss, but not for habitat

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*Id.* at 2.

<sup>471</sup> *Id.* at 35.

<sup>472</sup> Tables 70-79 document the severe declines in export organic carbon, physical removal of elements and compounds, and biological removal of elements and compounds due to the loss of backwater flooding. DSEIS F-5 (Wetlands) at Tables 70-79; *see also* Clean Water Act 404(c) Final Determination Appx. 8 at 4 ("the functions of Organic Carbon Export, Biological Removal of Elements and Compounds, and Physical Removal of Elements and Compounds show a significant impact as a result of the project").

<sup>473</sup> *See id.* at Table 80. The mitigation is almost exclusively limited to compensating for the detain floodwater, detain precipitation, cycle nutrients, and the maintain plant communities functions.

<sup>474</sup> *See* *Env'tl. Def. v. U.S. Army Corps of Engineers*, 515 F. Supp. 2d 69, 84 (D.D.C. 2007) (rejecting Corps' attempt to "reduce habitat types to fungible 'habitat units'" and thereby overlook critical distinctions).

<sup>475</sup> *Id.*

<sup>476</sup> *See id.* Tables 70-79.

<sup>477</sup> That estimate still fails to account for the thousands of acres of wetland impacts that Corps never considered, let alone attempted to mitigate.

<sup>478</sup> *See* *Gulf Power Co. v. F.E.R.C.*, 983 F.2d 1095, 1101 (D.C. Cir. 1993) ("[W]hen an agency takes inconsistent positions ... it must explain its reasoning.").

<sup>479</sup> DSEIS Appx. F-8 (Aquatic Resources) at 4

<sup>480</sup> *Id.*

<sup>481</sup> *Id.* The DSEIS bases this number on the quantity of lost rearing habitat, which is greater than lost spawning habitat.



mitigation.”<sup>482</sup> The DSEIS deeply discounts the Proposed Plan’s impacts on wetlands by claiming that hypoxia had degraded all aquatic resource habitat by sixty percent. As a result, the DSEIS claims the Proposed Plan will impact only 1,703 and 1,939 habitat units for spawning and rearing, respectively.<sup>483</sup> To calculate the requisite mitigation, the Corps does not apply an equivalent discount to the proposed reforestation, which would also be impacted by hypoxia under its theory. Instead, the DSEIS uses the same 0.71 figure discussed above, which represents the “AAHUs gained per acre without hypoxia.”<sup>484</sup> This inconsistency skewed the analysis, leading the DSEIS to claim that it would only need 2,732 acres of reforestation to offset impacts, not the 4,533 acres it initially identified.<sup>485</sup>

A consistent analysis, however, reveals the severe shortfalls in the DSEIS mitigation. If the DSEIS had consistently accounted for the effects of hypoxia on both habitat lost and habitat mitigated, the acreage of reforestation required to mitigate the impacts of the project would have remained constant at 4,553 acres—the amount initially identified in the DSEIS. This is so because the effects of hypoxia apply to both sides of the equation (i.e., hypoxia reduces the value of the lost habitat as well as the value of the reforestation habitat). The DSEIS fails to apply this basic mathematical principle, and thus fails to propose sufficient mitigation to offset the Proposed Plan’s significant impacts on aquatic resources, in violation of 33 U.S.C. §2283 and the 404(b)(1) Guidelines.<sup>486</sup>

Third, the DSEIS fails to account for the risks associated with the proposed compensatory mitigation, and thereby overlooks a critical aspect of the problem. The 404(b)(1) Guidelines require the Corps to calculate the appropriate compensatory mitigation amount by taking into consideration such relevant factors as the method of compensation, the likelihood of success, differences between lost functions at the impact site and mitigation site, and the difficulty of restoring aquatic resources, to name a few.<sup>487</sup> The Corps fails to do so. It ignores EPA’s insistence (as documented in the veto) on assigning a higher risk factor for mitigation sites that would be degraded by the Yazoo Pumps, and are thus twice as likely to fail.<sup>488</sup> The DSEIS does not assign any risk factors for the unidentified mitigation sites either, despite the inherent risks of attempting to recreate wetland habitat without site-specific plans.<sup>489</sup> Indeed, the Corps does not discuss compensation ratios anywhere in the DSEIS, and thereby entirely fails to consider a relevant factor under the 404(b)(1) Guidelines.

Each of these problems are then compounded by the wholesale failure of the DSEIS to include the mandatory specific and detailed mitigation plan, as discussed in detail below.

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<sup>482</sup> *Envtl. Def. v. U.S. Army Corps of Engineers*, 515 F. Supp. 2d at 79.

<sup>483</sup> *Id.* The Corps duplicated this same inconsistent analysis for spawning habitat. *Id.* As such, the errors identified here for rearing habitat apply equally to spawning habitat, underscoring the magnitude of the Corps’ error.

<sup>484</sup> DSEIS, Appendix F-8 (Aquatic Resources) at Table 3.

<sup>485</sup> *Id.*

<sup>486</sup> See *Envtl. Def.*, 515 F. Supp. 2d at 83 (“The finding of full mitigation in spite of this omission was arbitrary and capricious.”).

<sup>487</sup> See 40 C.F.R. § 230.93(f)(2).

<sup>488</sup> *Id.* at 7 (using a risk factor of 2 “due to the high risk involved and the lack of functional lift achieved in areas of reduced flooding.”).

<sup>489</sup> Clean Water Act 404(c) Final Determination Appx. 8 at 5; see *also* NRC report.



b. The Proposed Groundwater Wells Are Counter-Productive and Fail to Satisfy the Strict Requirements for Out-of-Kind Mitigation.

As noted above, the DSEIS also proposes installing 34 groundwater wells far outside of the project area that will operate “during the low water season.” DSEIS at 26. The purpose of these wells is to offset flood-related hypoxia—a problem that is not created by the Yazoo Pumps. According to the DSEIS:

The supplemental low flow groundwater wells will improve environmental flows in 9,321 acres of streams, directly benefiting fish, mussels, and other ecological attributes of the Yazoo Study Area. Monitoring studies have documented extensive hypoxia in the Yazoo Study Area during flood inundation, questioning the value of reforestation to fully address aquatic impacts. Therefore, the alternative mitigation method of the installation of supplemental low flow groundwater wells will address a range of other habitat impairment in the Big Sunflower-Steele Bayou drainage negatively impacting the overall fish communities and aquatic habitat through environmental flow establishment during the low water season. Re-establishing perennial flows with supplemental low flow groundwater wells is anticipated to offset high mortality of larvae and juvenile fish in the spring from hypoxia and improve survival of juveniles and adults during autumn. This approach address the overall aquatic community during all life stages and improves a total of 9,321 acres of streams by improved environmental flows.

DSEIS at 26 (emphasis added). The DSEIS also states that the wells “will only be operated during periods of low flow (generally during the fall), and will not contribute to water levels during backwater flood events.” DSEIS at 25. Because the groundwater wells are not offsetting an adverse impact created by the Yazoo Pumps, they will not mitigate for unavoidable losses to aquatic resources resulting from the Proposed Plan. See DSEIS at 21.

As importantly, the DSEIS provides no information to support a finding that these groundwater wells would not simply deplete the already severely-depleted aquifer underlying the Mississippi Alluvial Plain. The DSEIS also provides no information to suggest that any water that is pumped into stream segments far north of the project area through the groundwater wells will actually reach or benefit the streams within the Yazoo Pumps project area to the extent claimed. Since the groundwater wells will be installed “in areas primarily utilized for agricultural production” some or all of the added water could easily (and legally) be diverted for irrigation, to supplement water supplies in catfish or other farm ponds, or for other purposes.<sup>490</sup> Notably, as discussed below, the groundwater wells could themselves cause significant adverse impacts.

The Corps' regulations set a high bar for out-of-kind mitigation because it does not, by definition, replace the same structural and functional resources impacted by a project.<sup>491</sup> The Corps must demonstrate, based on a “watershed approach,” that out-of-kind mitigation will best serve the needs of

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<sup>490</sup> Producers in the Yazoo backwater area are already “increasing surface water usage in agricultural irrigation” due to concerns about the severe overdraft of the aquifer. See Gao (2019) at 2. This substitution is also cheaper as “irrigation with surface water resources can greatly reduce pumping cost.” *Id.* There is thus a significant risk that producers would divert any supplemental flows created by the groundwater wells to irrigate their crops, thereby depriving downstream reaches of any environmental benefit.

<sup>491</sup> 40 C.F.R. § 293.92 (“*Out-of-kind* means a resource of a different structural and functional type from the impacted resource.”).



the watershed.<sup>492</sup> To that end, the Corps must consider available “watershed plans” to assess the viability of the out-of-kind mitigation.<sup>493</sup> The Corps must also demonstrate that the out-of-kind mitigation measures satisfy the other requirements of the 404(b)(1) Guidelines, as outlined above. The DSEIS, however, simply disregards these substantive requirements. As a result, it relies on a counter-productive proposal to install 34 groundwater wells that has already been rejected due to its unacceptable impacts. The DSEIS also relies on pure conjecture to claim mitigation credits that are unrealistic, if not entirely illusory.

As a threshold matter, the DSEIS ignores an available watershed plan that rejected an analogous groundwater well proposal due to the unacceptable adverse impacts on the watershed. In 1998, the U.S. Department of Agriculture (USDA) developed the Mississippi Delta Comprehensive Multipurpose Water Resource Plan to evaluate various proposal to restore baseflows in the Sunflower River watershed.<sup>494</sup> A copy of this plan is provided at Attachment K to these comments. The Comprehensive Plan documents the adverse effects of excessive agricultural pumping, which has severely depleted the Mississippi River Alluvial Aquifer and created an underground cone of depression that captures baseflows in rivers and streams throughout the Yazoo River Basin.<sup>495</sup> As a result, baseflows flows along the Sunflower River have declined precipitously over the past 70 years, leading to low flow conditions.<sup>496</sup> Accordingly, USDA and a coalition of local partners carefully studied various proposals to augment the declining baseflows in the Sunflower River watershed.<sup>497</sup>

The Comprehensive Plan decisively rejected a proposal to supplement surface flows in the Big Sunflower River with groundwater wells located more than one-mile away from the Mississippi River levee. As explained in the Plan, additional groundwater pumping would further deplete the aquifer and capture even more baseflows from streams and rivers.<sup>498</sup> This counter-productive result is particularly acute for wells located more than one mile away from the Mississippi River. As the Comprehensive Plan found:

Well fields located within approximately one mile of the Mississippi River levee are recharged directly by the Mississippi River and should not cause declines in the Alluvial Aquifer. Work done by MSDEQ indicates that the river does not directly influence wells at distances greater than about 1 mile from the levee.<sup>499</sup>

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<sup>492</sup> *Id.* § 293.93(e)(2).

<sup>493</sup> *Id.* at § 293.93(c)(1) (“Where a watershed plan is available, the district engineer will determine whether the plan is appropriate for use in the watershed approach for compensatory mitigation.”).

<sup>494</sup> USDA, Natural Resource Conservation Service, Mississippi Delta Comprehensive Multipurpose Water Resource Plan [hereinafter Comprehensive Plan, provided as Attachment K], Exec. Summary; *see also id.* Chapter 3. By definition, the USDA’s Comprehensive Plan constitutes a watershed plan within the meaning of the 404(b)(1) Guidelines. *See* 40 C.F.R. § 293.92 (“*Watershed plan* means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation.”).

<sup>495</sup> Comprehensive Plan, Intro; *see also* Paul M. Barlow, Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow, U.S. Geologic Survey Circular 1376 (2012) [hereinafter Barlow 2012]. A copy of Barlow 2012 is provided at Attachment L to these comments.

<sup>496</sup> DSEIS Appx. K at 2-3; DSEIS Appx. F-8 (Aquatic Resources) at 13; DSEIS Appx. I (Water Quality) at 51.

<sup>497</sup> Comprehensive Report, Intro.

<sup>498</sup> Comprehensive Report Chapter 2, at 7; *see also* Barlow (2012).

<sup>499</sup> Comprehensive Report Chapter 2, at 7.



Accordingly, the USDA decisively ruled out any additional groundwater wells more than a mile away from the levee, explaining that “[t]he potential Alluvial Aquifer drawdown that would occur with using wells too far from the River could make this an unacceptable option.”<sup>500</sup>

The Corps entirely failed to consider this watershed plan, and thus overlooked the unacceptable adverse impacts of the proposed groundwater wells. Instead, in one conclusory and counterfactual sentence, the Corps asserts that “the wells are within 30,000 feet of the Mississippi River and have access to its abundant water supply.”<sup>501</sup> This unsupported statement is directly contradicted by the USDA’s Comprehensive Plan, which found that the River “does not directly influence wells at a distance greater than about 1 mile from the levee.” As the Corps is aware, there are 5280 feet in a mile which means the DSEIS is proposing locating groundwater wells up to 5.7 miles away from the River in areas where they would further drawdown the aquifer.

Monitoring data also contradicts the Corps’ fact-free assumption that the proposed groundwater wells would not deplete the aquifer. For example, the Corps proposes to locate a series of groundwater wells northeast of Beluah, Mississippi along Labayan and Lane Bayou.<sup>502</sup> A USGS groundwater monitoring well near these sites shows a consistent downward trend in groundwater levels,<sup>503</sup> proving that agricultural pumping is the major influence in this area that far exceeds the River’s influence. Accordingly, additional pumping would worsen the overdraft problem and further deplete baseflows—an unacceptable impact, as explained by the USDA’s Comprehensive Plan.<sup>504</sup> The same is true for the proposed groundwater wells at Browns, Straights, and Lower Stokes Bayou,<sup>505</sup> all of which are near a USGS monitoring well showing significant declines in groundwater levels.<sup>506</sup> The Corps, however, entirely failed to “examine the relevant data and articulate a satisfactory explanation for its action,” rendering its mitigation analysis arbitrary and capricious.<sup>507</sup>

As a result of this error, the DSEIS also overlooked the authority of the Mississippi Department of Environmental Quality (MDEQ) to shut down the groundwater wells due to their adverse impacts on the alluvial aquifer. In the DSEIS, the Corps acknowledges that it would obtain necessary permits from MDEQ before constructing the groundwater wells.<sup>508</sup> But the DSEIS fails to recognize MDEQ’s authority to prohibit any groundwater pumping at these sites during low-flow conditions—precisely when the Corps would operate the wells.<sup>509</sup> If MDEQ prohibited pumping, the proposed groundwater wells would

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<sup>500</sup> Comprehensive Report Chapter 3 at 21.

<sup>501</sup> DEIS Appx. K at 4; *see also* DSEIS Appx. F-8 (Aquatic Resources) at 16 (explaining that the groundwater wells would be “primarily along Highway 1 near Clarksdale (Coahoma County) south to Arcola (Washington County)”); *see also* DSEIS Appx. I (Water Quality) at Figs. 4-3, 4-4, and 4-5.

<sup>502</sup> *See* DSEIS Appx. K at Fig 4-1.

<sup>503</sup> USGS Groundwater Watch, Field Groundwater Level Measurements for Site Numbers 334957090564301 - 011F0020 BOLIVAR & 334106090590902 - 011N0002 BOLIVAR, provided as Attachment M at 1-2.

<sup>504</sup> *See* Barlow 2012.

<sup>505</sup> *See* DEIS Appx. K at Fig 4-1.

<sup>506</sup> USGS Groundwater Watch at 3-4, provided at Attachment M to these comments.

<sup>507</sup> *See* Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

<sup>508</sup> DSEIS at 25.

<sup>509</sup> *See* Report Chapter 3 at 17 (“a MS DEQ defined minimum flow for the interior Delta rivers and streams . . . could result in the State of Mississippi prohibiting all groundwater withdrawals from the Aquifer to allow these groundwater levels to rise sufficiently to restore baseflows.”).



provide none of the supplemental flows claimed in the DSEIS, rendering this mitigation measure entirely illusory.<sup>510</sup>

The DSEIS also relies on a series of unrealistic assumptions to overinflate the benefits of the groundwater wells. According to the DSEIS, the groundwater wells would discharge up to 5 cfs of water into headwater streams during very dry conditions.<sup>511</sup> As such, there is a significant risk that some or all of these “supplemental” flows would be lost due to transmission—one of “the major paths of water loss of surface water” in the Big Sunflower River basin.<sup>512</sup> This is a particularly acute problem given that the targeted headwater streams are dry, isolated from the lower reaches due to zero flow conditions, and thus would soak up the supplemental flows.<sup>513</sup> Yet, the Corps did not account for any transmission losses in its mitigation analysis and instead assumed the supplemental flows would reconnect 654 miles of streams.<sup>514</sup> This unsupported and unrealistic assumption highlights the flaws in the Corps’ analysis.<sup>515</sup>

In addition, the DSEIS disregards the fact that the Yazoo Pumps would exacerbate low-flow conditions in the Yazoo Backwater Area and thereby undercut any benefits provided by the groundwater wells. As explained by EPA, the Yazoo Pumps would reduce the ability of floodwaters to recharge the aquifer to levels that would sustain baseflows.<sup>516</sup> By interfering with this recharge process, the pumps would, in turn, “reduce the amount of water that returns to area streams as baseflow.”<sup>517</sup> That decline in baseflows would counteract any “supplemental” flows created by the groundwater wells, thereby reducing or eliminating the purported mitigation credits claimed by the Corps. The DSEIS, however, fails to account for this serious problem. As a result, the Corps has no basis for concluding the proposed mitigation measures provide the requisite benefits to mitigate the significant, unacceptable impacts of the Proposed Plan.<sup>518</sup>

Furthermore, the DSEIS undermines the purported mitigation measures by inexplicably modifying the operating plan for the Steel Bayou Flood Control Structure to eliminate benefits for aquatic habitat. In 2007, the Corps proposed to increase water levels at the Steel Bayou Flood Control Structure during low

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<sup>510</sup> The Corps also fails to explain why its proposed groundwater wells would succeed when other “augmentation efforts has been hampered since the inception minimizing the full potential of the project on the basin.” DSEIS Appx. I (Water Quality) at 52. In fact, the Yazoo Mississippi Delta Joint Water Management District implemented a 50 cfs flow-augmentation project, but has provided almost no increases in minimum flows along the Big Sunflower River over the past 5 years. *Id.* (Fig. 4-2).

<sup>511</sup> DSEIS at 79.

<sup>512</sup> Fei Gao, *Simulating Potential Weekly Stream and Pond Water Available for Irrigation in the Big Sunflower River Watershed of the Mississippi Delta*, Water: June 2019, at 2 [hereinafter Gao (2019)], provided as Attachment N. See also Olufemi Abimbola, *Influence of Watershed Characteristics on Streambed Hydraulic Conductivity Across Multiple Stream Orders*, Scientific Reports (2020), provided as Attachment O. As explained in Gao 2019, Stream transmission is equivalent to the effective hydraulic conductivity of the channel alluvium multiplied by the flow travel time, the wetted perimeter (m), and the channel length (km). Gao (2019) at 5.

<sup>513</sup> DSEIS at Appx. F-8 (Aquatic Resources) at 15.

<sup>514</sup> See, e.g., DSEIS Appx. F-8 (Aquatic Resources) at 17 (calculating increased flows at Merigold without any deduction for losses due to transmission); see also *id.* at Table 14.

<sup>515</sup> See *W. Virginia v. E.P.A.*, 362 F.3d 861, 867 (D.C. Cir. 2004) (Agency’s “failure to explain why it made that choice was error, particularly in the face of contrary real-world data.”).

<sup>516</sup> Clean Water Act 404(c) Final Determination at 51.

<sup>517</sup> *Id.*

<sup>518</sup> See *Env’tl Def.*, 515 F. Supp. at 83 (“The finding of full mitigation in spite of this omission was arbitrary and capricious.”).



flow conditions so as to create additional aquatic habitat.<sup>519</sup> The DSEIS, however, reverses course and proposes to eliminate this component of the 2007 plan. As a result, the Proposed Plan further reduces aquatic habitat—another perverse result that counteracts any benefits of the proposed groundwater wells. This unexplained reversal was arbitrary and capricious.<sup>520</sup> It also plainly violates the 404(b)(1) Guidelines, which require the Corps to take *all* appropriate and practicable steps to minimize and compensate for the project’s adverse impacts on the aquatic ecosystem.<sup>521</sup> Instead of a comprehensive approach, the Corps has taken inconsistent approaches that are at cross-purposes with its obligation to minimize and compensate for the significant, unacceptable adverse impacts of the project.

The Corps also relies on an inconsistent and irrational analysis to arbitrarily overstate the benefits of the groundwater wells. First, the DSEIS claims that groundwater wells would provide supplemental flows that increase “minimum water depth” and “re-connect large areas of backwaters otherwise isolated during non-flowing conditions.”<sup>522</sup> During these low flow events, the wetted width of the Big Sunflower River narrows down to a minimum of 23 feet.<sup>523</sup> Instead of using that minimum width to calculate the purported benefit to aquatic habitat during minimum flows, however, the DSEIS uses the far larger mean width of 167 feet, even though it does not coincide with the purportedly problematic non-flowing events. As a result of this mismatch, the DSEIS overinflates the purported benefits by a factor of almost 8.<sup>524</sup>

Second, the DSEIS uses an irrational formula to claim habitat benefits that simply do not exist in the real world. For example, the DSEIS calculates the increase in aquatic habitat by multiplying the purported increase in wetted acres due to the groundwater wells by 0.46—the average aquatic habitat value for *reforested lands*.<sup>525</sup> But the groundwater wells will increase stream flows in headwater streams that are located alongside agricultural fields in the upper reaches of the Yazoo basin.<sup>526</sup> The habitat value of these agricultural lands is far less (0.2) than the amount used by the Corps in its analysis.<sup>527</sup> This mismatch also renders the results arbitrary and capricious.<sup>528</sup>

Third, the DSEIS fails to demonstrate that the proposed groundwater wells would have a “greater likelihood” of offsetting the pumps’ significant adverse impacts to fish and spawning habitat, as compared to on-site reforestation.<sup>529</sup> As explained above, the Proposed Plan would eliminate thousands of acres of short hydroperiod wetlands that are critical to fish spawning and rearing. Instead of replacing that unacceptable loss of critical wetlands, however, the DSEIS attempts to focus on a

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<sup>519</sup> 2007 Final SEIS Appx. 11 (Aquatics) at 16.

<sup>520</sup> See *Fox Television*, 556 U.S. at 516 (An agency must give “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.”).

<sup>521</sup> 40 C.F.R. § 230.10(d).

<sup>522</sup> DSEIS at Appx. F-8 (Aquatic Resources) at 15.

<sup>523</sup> *Id.* at 14 (Table 13).

<sup>524</sup> *Id.*

<sup>525</sup> See DSEIS Appx. F-8 (Aquatics) at Table 14 (multiplying “Acres” by “With Flow AAHU (0.46)”); 2007 SEIS Appx. 10 at 16 (“an Average Annual Habitat Unit (AAHU) gained per acre of reforested land was determined for spawning (0.46) and rearing (0.46)”).

<sup>526</sup> See, e.g., DSEIS Appx. I (Water Quality) at Figure 4-4 and 4-5 (depicting headwater tributaries alongside cleared agricultural lands).

<sup>527</sup> SEIS Appx. 11 (Aquatics) at 36.

<sup>528</sup> See *Appalachian Power Co. v. E.P.A.*, 249 F.3d 1032, 1053 (D.C. Cir. 2001) (analytical assumptions must have a “rational relationship” to the real world).

<sup>529</sup> 40 C.F.R. 230.93(b)(6).



different problem regarding hypoxia in the backwater area. But addressing that problem requires the same solution. As explained in the DSEIS, hypoxia occurs at different gradients in the water column. Fish thus depend on unobstructed access to backwater habitat—such as reforested short hydroperiod wetlands—to “escape from hypoxic waters.”<sup>530</sup> The Corps should be creating even more wetland habitat through reforestation, not less as it illogically proposes in the DSEIS.

Finally, the DSEIS fails to demonstrate that increasing low flows in the fall would offset the losses of spawning habitat in the Spring. At best, the DSEIS vaguely asserts that increasing flows “may” offset hypoxia in the spring.<sup>531</sup> The mitigation is thus admittedly uncertain to provide the purported environmental benefit—a risk that must be factored into the calculation of mitigation credits but was not.<sup>532</sup> Furthermore, the Corps provides no performance standards, monitoring requirements, or adaptive management measures for the groundwater wells to ensure any mitigation benefits or avoid adverse consequences.<sup>533</sup>

### 3. The DSEIS Does Not Include the Required Detailed Mitigation Plan

The DSEIS does not include a legally adequate mitigation plan. To the contrary, the DSEIS provides nothing more than a conceptual framework upon which a future mitigation plan may, or may not, be based.

Mitigation plans for water resources projects constructed by the Corps—including the mitigation plan for the Proposed Plan—must include:

- (1) A detailed description of the type, amount, and characteristics of the habitat being restored, a description of the physical actions to be taken to carry out the restoration, and the functions and values that will be achieved;
- (2) A detailed description of the ecological success criteria, based on replacement of lost functions and values, that will be evaluated and used to determine mitigation success;
- (3) A description of the lands and interest in lands to be acquired for mitigation, and the basis for determining that those lands will be available;
- (4) A mitigation monitoring plan that includes the cost and duration of monitoring, and identifies the entities responsible for monitoring if it is practicable to do so (if the responsible entity is not identified in the monitoring plan it must be identified in the project partnership agreement that is required for all Corps projects). Corps mitigation must be monitored until the monitoring demonstrates that the ecological success criteria established in the mitigation plan have been met; and
- (5) A contingency plan for taking corrective action in cases where monitoring shows that mitigation is not achieving ecological success as defined in the plan.<sup>534</sup>

Mitigation plans for water resources projects constructed by the Corps—including the mitigation plan for the Proposed Plan—must also comply with the Clean Water Act mitigation requirements, which

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<sup>530</sup> DSEIS APPX. F-8 (Aquatic Resources) at 8.

<sup>531</sup> DSEIS Appx. F-8 (Aquatics) at 18.

<sup>532</sup> 40 C.F.R. § 230.93(f)(2).

<sup>533</sup> See 40 C.F.R. 230.93(f)(7), (8), (12).

<sup>534</sup> 33 U.S.C. § 2283(d).



require that a mitigation plan contain a level of detail “commensurate with the scale and scope of the impacts”<sup>535</sup> and include, among other things:

- (1) “A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site.”<sup>536</sup>
- (2) “A description of the ecological characteristics of the proposed compensatory mitigation project site . . . This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site.”<sup>537</sup>
- (3) “Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.”<sup>538</sup>
- (4) “A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.”<sup>539</sup>
- (5) “Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.”<sup>540</sup> These performance standards must be objective and verifiable and based on the best available science that can be measured or assessed in a practicable manner.<sup>541</sup>
- (6) “A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.”<sup>542</sup> The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands).<sup>543</sup>
- (7) “A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.”<sup>544</sup>

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<sup>535</sup> 33 C.F.R. 332.4(c).

<sup>536</sup> 33 C.F.R. § 332.4(c)(3).

<sup>537</sup> 33 C.F.R. § 332.4(c)(5).

<sup>538</sup> 33 C.F.R. § 332.4(c)(7).

<sup>539</sup> 33 C.F.R. § 332.4(c)(8).

<sup>540</sup> 33 C.F.R. § 332.4(c)(9).

<sup>541</sup> 33 C.F.R. § 332.5(a) and (b).

<sup>542</sup> 33 C.F.R. § 332.4(c)(10).

<sup>543</sup> 33 C.F.R. § 332.6.

<sup>544</sup> 33 C.F.R. § 332.4(c)(11).



- (8) “A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success.”<sup>545</sup>
- (9) “A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.”<sup>546</sup>
- (10) A clear statement of the compensatory mitigation requirements, including special conditions that “must be enforceable.” Among other things, the “special conditions must clearly indicate the party or parties responsible for the implementation, performance, and longterm management of the compensatory mitigation project.”<sup>547</sup>
- (11) “The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (e.g., clear cutting or mineral extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project.”<sup>548</sup>

However, in direct violation of 33 U.S.C. 2283 and the Clean Water Act, the DSEIS provides none of this information but instead merely provides a conceptual mitigation plan that may, or may not, be implemented. For example:

- The DSEIS does not identify specific mitigation sites. To the contrary, it states explicitly that “site-specific mitigation tracts have not been identified” and that “decisions on the implementation of mitigation measures” and “a site-specific, detailed mitigation plan” will not be made until those sites are selected.<sup>549</sup> This wait-and-see approach to mitigation is expressly prohibited because it is destined to fail.<sup>550</sup>
- The DSEIS does not include the mandatory details regarding the type, amount, and characteristics of the habitat being restored, a description of the physical actions to be taken to carry out the restoration, the specific functions and values that will be achieved, or the detailed ecological success criteria that will apply to those sites. To the contrary, the DSEIS clearly states that such information will not be developed until mitigation lands are actually acquired.<sup>551</sup>
- The DSEIS does not address the deficiencies in its monitoring requirements documented by EPA in the veto. The veto faults the Corps for relying on “visual inspections” to monitor the

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<sup>545</sup> 33 C.F.R. § 332.4(c)(12).

<sup>546</sup> 33 C.F.R. § 332.4(c)(13).

<sup>547</sup> 33 C.F.R. § 332.3(k) and (l).

<sup>548</sup> 33 C.F.R. § 332.7(a).

<sup>549</sup> DSEIS, Appendix J (Mitigation) at 1.

<sup>550</sup> 40 C.F.R. 230.93.

<sup>551</sup> DSEIS, Appendix J (Mitigation) at 7. Simply stating that the mitigation will be counted as successful if it replaces the lost habitat units identified in the DSEIS, as the DSEIS has done in the conceptual mitigation plan, does not constitute an ecological performance standard as it does nothing to do ensure the adequacy of the mitigation. Moreover, as discussed throughout these comments, the DSEIS assessment of lost functions is fatally flawed and even full replacement of these identified functional values would not offset the significant and unacceptable adverse impacts of the project.



proposed reforestation, explaining that such a superficial approach was “one of many weaknesses in the mitigation plan, which make it impossible to conclude that impacts will be reduced permanently below the threshold of significant degradation.”<sup>552</sup> Yet, the DSEIS still commits only to “visually inspecting” vegetation in the mitigation plan—the same inadequate approach rejected by EPA.<sup>553</sup> In fact, the Corps makes a concerted effort to avoid any additional monitoring obligations, a tactic that simply underscores its failure to consider EPA’s advice or comply with the 404(b)(1) Guidelines.<sup>554</sup>

- The DSEIS does not provide the mandatory basis for determining that the specific mitigation sites will be available. Instead, the DSEIS simply asserts without any evidence that it is anticipated that the Corps will be able to obtain certain types of land for mitigation.<sup>555</sup> The DSEIS acknowledges that it has not made any inquiries to landowners regarding their willingness to sell lands to the Corps for mitigation. To the contrary, the DSEIS states that landowners will not be queried regarding their interest in selling lands to the Corps for mitigation until a project decision is made.<sup>556</sup>
- The DSEIS acknowledges that it does not include the required contingency plan. Instead the DSEIS states that one will be developed if required.<sup>557</sup>

#### I. The DSEIS Has Not Undergone the Required Independent External Peer Review

The DSEIS must be reviewed under the Independent External Peer Review (IEPR) process established by the Water Resources Development Act of 2007,<sup>558</sup> and that required IEPR should already be very close to completion. However, the Conservation Organizations can find no reference to an IEPR being planned or carried out for the DSEIS. We strongly urge the Corps to immediately initiate the IEPR process and contract with the National Academies to carry out the IEPR for the DSEIS.

The DSEIS clearly triggers mandatory IEPR under this provision as it evaluates a civil works project that will cost well over \$200 million and that is unquestionably highly controversial.<sup>559</sup> The project clearly satisfies both of the IEPR controversy triggers as: “there is a significant public dispute as to the size, nature, or effects of the project” and “there is a significant public dispute as to the economic or

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<sup>552</sup> Clean Water Act 404(c) Final Determination at 62.

<sup>553</sup> DSEIS Appx. J (Mitigation) at 14.

<sup>554</sup> For example, the Corps avoids hydrology monitoring and merely suggests that it “could” do so. DSEIS Appx. J (Mitigation) at 14. This is a transparent attempt to avoid the 404(b)(1) Guidelines.

<sup>555</sup> DSEIS, Appendix J (Mitigation) at 5, 6 (according to the mitigation plan, “it is anticipated that agriculture land in the batture and lands subjected to frequent backwater flooding would have a high likelihood of acquisition”; “it is anticipated that land subjected to frequent flooding would have a high likelihood of acquisition”; and “it was estimated that 70 percent of” lands at or below the post-project 14-day consecutive inundation zone “could be acquired for compensatory mitigation”).

<sup>556</sup> DSEIS, Appendix J (Mitigation) at 7.

<sup>557</sup> DSEIS, Appendix J (Mitigation) at 5 (“In the event that mitigation lands cannot be identified and acquired in the following mitigation zones, a contingency plan would be established and submitted to the inter-agency team for review and comment.”).

<sup>558</sup> 33 USC 2343.

<sup>559</sup> 33 USC 2343(a). The Yazoo Pumps was projected to cost well over the \$200 million mandatory trigger for IEPR in 2007; inflation alone will have greatly increased the project’s cost.



environmental costs or benefits of the project.”<sup>560</sup> The controversy and significant public disputes surrounding the environmental costs of the Proposed Plan are documented throughout these comments.

As the Corps is well aware, “in all cases” the IEPR review must be carried out concurrently with the project study and must be completed “not more than 60 days after the last day of the public comment period for the draft project study,” unless the Chief of Engineers determines that more time is necessary.<sup>561</sup> The Corps provides IEPR plans online, and is required by law to provide the public with information on the timing of the IEPR, the entity that has the contract for the IEPR review, and the names and qualifications of the IEPR panel members.<sup>562</sup>

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<sup>560</sup> 33 USC 2343 (a)(4).

<sup>561</sup> 33 USC 2343(b) and 2343(d).

<sup>562</sup> 33 USC 2343(c).



## Conclusion

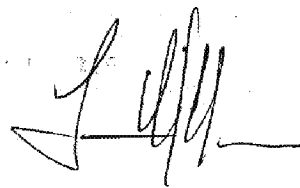
The Conservation Organizations staunchly oppose the Proposed Plan which is clearly prohibited by the 2008 Clean Water Act § 404(c) Final Determination and the Clean Water Act 404(b)(1) Guidelines. The Conservation Organizations urge the Corps to abandon the Proposed Plan and the deeply flawed DSEIS, and instead focus on opportunities for providing meaningful, sustainable, and immediate benefits to the communities in the Yazoo Backwater Area while restoring this ecologically critical region.

Please contact Olivia Dorothy with American Rivers ([odorothy@americanrivers.org](mailto:odorothy@americanrivers.org), 217-390-3658) or Jill Mastrototaro with Audubon Mississippi ([Jill.Mastrototaro@audubon.org](mailto:Jill.Mastrototaro@audubon.org), 504-481-3659) if you have any questions or would like additional information.

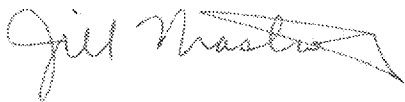
Respectfully submitted,



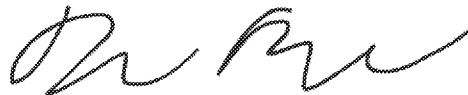
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**National Audubon Society**



Matt Rota  
Senior Policy Director  
**Healthy Gulf**



Dalal Aboulhosn  
Deputy Legislative Director  
**Sierra Club**



## Appointment

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**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/23/2020 12:57:55 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
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**Subject:** Yazoo Senior Leadership Briefing

**Location:** Microsoft Teams Meeting

**Start:** 11/18/2020 1:00:00 PM

**End:** 11/18/2020 1:45:00 PM

**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; Hoppe, Allison; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt

---

## Join Microsoft Teams Meeting

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---



## Appointment

---

**From:** Jones, Aaryn [Jones.Aaryn@epa.gov]  
**Sent:** 10/20/2020 2:54:49 AM  
**To:** Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]  
**CC:** Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Axelrod, Julie [Axelrod.Julie@epa.gov]; Tomiak, Robert [tomiaak.robert@epa.gov]; Abrams, Nancy [Abrams.Nancy@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]  
**Subject:** (Attachments and Call-in added) Yazoo Backwater EIS  
**Attachments:** Summary Comparison of 2007 2019 Pump Plans.docx; Yazoo Backwater Area Brief - DRA.pptx  
**Location:** Microsoft Teams Meeting  
**Start:** 10/20/2020 1:00:00 PM  
**End:** 10/20/2020 1:45:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Blevins, John; Palmer, Leif; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Rubini, Suzanne  
**Optional Attendees:** (Fite.Mark@epa.gov); Kajumba, Ntale; Ainslie, William; Creswell, Michael; Kaiser, Russell; Barger, Cindy; Goodin, John; Frazer, Brian; Neugeboren, Steven; Carrie Wehling; Nalven, Heidi; Ghosh, Mita; Hicks, Matt; Allenbach, Becky; McGill, Thomas; Calli, Rosemary; Wheeler, Kevin; Axelrod, Julie; Tomiak, Robert; Abrams, Nancy; Simons, Andrew; Marshall, Tom; Hoppe, Allison

---

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---



## Appointment

---

**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/23/2020 12:13:39 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**CC:** Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]  
**Subject:** Yazoo Bi Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting  
**Start:** 11/25/2020 6:30:00 PM  
**End:** 11/25/2020 7:00:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; Hoppe, Allison; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt

---

## Microsoft Teams meeting

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Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/30/2020 10:36:37 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: Draft Yazoo comment letter

Thank you so much!

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Monday, November 30, 2020 4:52 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** RE: Draft Yazoo comment letter

DELIBERATIVE

Attaching a clean and redline version with OGC/ORC edits and new language on **Ex. 5 AC/DP**. I've also asked my staff to get this to whomever in the Region has the pen on the master version. Let me know if you have questions or reactions to these edits or need anything else from us. You'll notice that there is one paragraph with factual statements where R4 and the program should confirm you're comfortable and/or make appropriate modifications. Thank you.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Monday, November 30, 2020 12:25 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** Draft Yazoo comment letter

Hi Mandy,

Attached is the draft Yazoo comment letter. It is still being worked on, most notably **Ex. 5 AC/DP**. **Ex. 5 AC/DP** I expect to get something on this later today, but wanted to send the current document now so you could review it. I expect most of it will remain as is, with changes in the cover letter and at the opening portion of the appendix based upon input from David/OGC. The comments are due today.

Please let me know if you have questions/concerns.

Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4



61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 6/10/2020 10:02:09 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Fwd: PRESS REGION 4: Yazoo Backwater Pumps

FYI

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell: Ex. 6 Personal Privacy (PP)

Begin forwarded message:

**From:** "Grantham, Nancy" <Grantham.Nancy@epa.gov>  
**Date:** June 10, 2020 at 2:41:09 PM MDT  
**To:** "Jenkins, Brandi" <Jenkins.Brandi@epa.gov>, regionalpress <regionalpress@epa.gov>  
**Cc:** "Risley, David" <Risley.David@epa.gov>, "Wise, Allison" <Wise.Allison@epa.gov>, "Pinkney, James" <Pinkney.James@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>  
**Subject:** RE: PRESS REGION 4: Yazoo Backwater Pumps

Good to go

---

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Sent:** Wednesday, June 10, 2020 4:32 PM  
**To:** regionalpress <regionalpress@epa.gov>  
**Cc:** Grantham, Nancy <Grantham.Nancy@epa.gov>; Risley, David <Risley.David@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Pinkney, James <Pinkney.James@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>  
**Subject:** PRESS REGION 4: Yazoo Backwater Pumps

We received the below request to provide a statement on the Yazoo pumps project. We updated our statement (see below) and it has been approved by the RA. Please let me know if we can provide the statement for the story.

- ***The EPA recognizes the disruptive impacts of flooding along the lower Mississippi River and the Yazoo Backwater Area on the day-to-day lives of Mississippians and the economy of the area. We have heard first-hand from residents as well as local, state and federal elected officials about the urgent need for flood control. On April 16, 2020, the U.S. Army Corps of Engineers (USACE) Vicksburg District issued a notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the 2007 Final Supplemental Environmental Impact Statement on the Yazoo Backwater Area. EPA is a cooperating agency on the proposed project. We remain committed to working actively and cooperatively with the USACE on the potential flood control options they are considering as they relate to our National Environmental Policy Act and Clean Water Act programs. Our shared goal is to support a long-term, viable solution.***

Thanks,



Brandi

**From:** Nathan Willis <Ex. 6 Personal Privacy (PP)>  
**Sent:** Tuesday, June 2, 2020 11:45 AM  
**To:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** Statement Request - Yazoo Backwater Pumps

Hi Brandi,

I am a video journalist with Business Insider. We are working on a story in Mississippi about farmers and communities dealing with flooding for a second year in a row. I understand that the Yazoo Backwater Pumps project is currently being reconsidered by the EPA, and we are requesting a statement on where the the pumping station project currently stands and what the process looks like from here.

Thank you so much,

Nathan Willis

Ex. 6 Personal Privacy (PP)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/30/2020 10:36:14 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: Draft Yazoo comment letter  
**Attachments:** Yazoo DSEIS Comment Letter Draft with revisions 11.30.20 MSW.docx

Mandy,

I have made the following slight additions:

- 1)
- 2)
- 3)

## Ex. 5 Deliberative Process (DP)

Please let me know if you have thoughts or concerns – and if not, I will send this to get prepped for signature.

Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, November 30, 2020 5:00 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** RE: Draft Yazoo comment letter

I am fine with this. The new language Ex. 5 AC/DP is well written and conveys the Office of Water leadership's understanding of the circumstances surrounding Ex. 5 AC/DP

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Monday, November 30, 2020 4:52 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** RE: Draft Yazoo comment letter

### DELIBERATIVE

Attaching a clean and redline version with OGC/ORC edits and new language Ex. 5 AC/DP I've also asked my staff to get this to whomever in the Region has the pen on the master version. Let me know if you have questions or reactions to these edits or need anything else from us. You'll notice that there is one paragraph with factual statements where R4 and the program should confirm you're comfortable and/or make appropriate modifications. Thank you.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)



---

**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Monday, November 30, 2020 12:25 PM  
**To:** Gunasekara, Mandy <[gunasekara.Mandy@epa.gov](mailto:gunasekara.Mandy@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>; Wheeler, Kevin <[Wheeler.Kevin@epa.gov](mailto:Wheeler.Kevin@epa.gov)>  
**Subject:** Draft Yazoo comment letter

Hi Mandy,

Attached is the draft Yazoo comment letter. It is still being worked on, most notably **Ex. 5 AC/DP**. **Ex. 5 AC/DP** I expect to get something on this later today, but wanted to send the current document now so you could review it. I expect most of it will remain as is, with changes in the cover letter and at the opening portion of the appendix based upon input from David/OGC. The comments are due today.

Please let me know if you have questions/concerns.

Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 6/17/2020 7:18:47 PM  
**To:** Mastrototaro, Jill [Jill.Mastrototaro@audubon.org]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Hi Jill,

Your email with letter was well received. We will review them and let you know if we have any questions. In the meantime, please do not hesitate to contact me by phone or email if there is anything further we can help with. Stay safe and well.

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Mobile: (202) 774-6656  
Email: [mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Wednesday, June 17, 2020 2:37 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Hello Mr. Forsgren and Ms. Mejias,

I hope this email finds you healthy and doing well.

I wanted to share with you a copy of the letter (attached) that Audubon and several partners submitted in response to the U.S. Army Corps of Engineers' Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Yazoo Pumps. Given its large file size, [Appendices B-I are downloadable here](#). Also attached is our press release that highlights our main concerns.

Our organizations strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

Our letter urges the Corps to abandon its misguided efforts to build the destructive, ineffective Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate flood risk reduction benefits to affected communities in the Yazoo Backwater Area while restoring this ecologically critical region - including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

We believe the Corps' effort is prohibited by EPA's 2008 Final Determination and that the Yazoo Pumps may not be - and should not be - constructed. Furthermore, the Corps' refusal to examine other alternatives violates the National Environmental Policy Act, several Water Resources Development Act provisions, the Clean Water Act, and the Endangered Species Act.

Over 100 national, state and local conservation and public interest organizations representing millions of members and supporters delivered a letter to the Corps reinforcing this urgent message. [\[View this letter here.\]](#)



Thirty-eight thousand concerned Mississippians and Americans from across the country accompanied this broad chorus by sending electronic letters to the Corps.

I hope this information is helpful to you. Please do not hesitate to reach out for more details or with questions.

Kind regards,

Jill Mastrototaro

---

**Jill Mastrototaro**

Policy Director

504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



## Appointment

---

**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/28/2020 9:25:27 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**CC:** Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]  
**Subject:** Yazoo Bi-Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting  
**Start:** 11/6/2020 1:00:00 PM  
**End:** 11/6/2020 1:45:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt; Hoppe, Allison; Creswell, Michael

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Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 5/8/2020 8:42:33 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Fwd: EPA Cooperating Agency Letter (Yazoo)  
**Attachments:** Yazoo Coop. Agency Response (Draft) 5.8.20.docx; ATT00001.htm

*Internal/deliberative*

Lee and David,

This is the draft letter my folks have drafted to agree to being a cooperating agency on the Yazoo SEIS. I'd like your thoughts before I discuss edits with folks. At one point Lee noted that he had some thoughts on

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Do you have time for a call early next week? Lee, I will give a call Monday to touch base.

I hope you both are well. Have a great weekend,  
Mary

Sent from my iPhone

Begin forwarded message:

**From:** "Kajumba, Ntale" <Kajumba.Ntale@epa.gov>  
**Date:** May 8, 2020 at 2:32:23 PM EDT  
**To:** "Walker, Mary" <walker.mary@epa.gov>  
**Cc:** "Hicks, Matt" <Hicks.Matthew@epa.gov>, "Fite, Mark" <Fite.Mark@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>, "Banister, Beverly" <Banister.Beverly@epa.gov>, "Ashbee, Blake" <ashbee.blake@epa.gov>  
**Subject:** EPA Cooperating Agency Letter (Yazoo)

Hi Mary,

Attached is a preliminary response for the EPA Yazoo Cooperating Agency Letter that Matt and I worked on for your initial conversations with HQs. Others will get a chance to review the letter next week including the Office of General Counsel.

Thanks,

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620



Kajumba.ntale@epa.gov



Message

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 11/30/2020 9:51:32 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: Draft Yazoo comment letter  
**Attachments:** Yazoo DSEIS Comment Letter Draft with revisions 11.30.20 clean.docx; Yazoo DSEIS Comment Letter Draft with revisions 11.30.20.docx

DELIBERATIVE

Attaching a clean and redline version with OGC/ORC edits and new language **Ex. 5 AC/DP** I've also asked my staff to get this to whomever in the Region has the pen on the master version. Let me know if you have questions or reactions to these edits or need anything else from us. You'll notice that there is one paragraph with factual statements where R4 and the program should confirm you're comfortable and/or make appropriate modifications. Thank you.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Monday, November 30, 2020 12:25 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** Draft Yazoo comment letter

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**Ex. 5 AC/DP** I expect to get something on this later today, but wanted to send the current document now so you could review it. I expect most of it will remain as is, with changes in the cover letter and at the opening portion of the appendix based upon input from David/OGC. The comments are due today.

Please let me know if you have questions/concerns.

Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**Sent:** 12/11/2020 9:38:19 PM  
**To:** Blevins, John [Blevins.John@epa.gov]; Gettle, Jeanneanne [Gettle.Jeanneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Fite, Mark [Fite.Mark@epa.gov]  
**Subject:** Yazoo Transmittal - Corps Official Response to EPA and NOI  
**Attachments:** Notice of Availaility (YBW FSEIS No. 2) (11Dec20).pdf; EPA comment response letter (11Dec20).pdf; EPA Comment Responses (08Dec20) (2).pdf

Hi Everyone,

Attached are the official transmittal letter from Vicksburg and the Districts response to EPA comments on the Draft Supplement No. 2. Also attached is the NOA for FSEIS No. 2 which also contains the link to access the FSEIS No. 2 sent today.

Ntale

**Ntale Kajumba**

NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, VICKSBURG DISTRICT  
4155 CLAY STREET  
VICKSBURG, MS 39183-3435

December 11, 2020

## NOTICE OF AVAILABILITY

The U.S. Army Corps of Engineers (USACE) has published the Final Supplement No. 2 (Final SEIS No. 2) to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement.

The Yazoo Study Area has experienced flooding in nine out of the last ten years. Specifically, the 2019 backwater flood caused two deaths, caused hundreds of millions of dollars in damages, flooded over 600 homes, and significantly adversely affected the aquatic and terrestrial environment. The combination of more frequent and significant flooding; substantial environmental, economic, and safety concerns; and new and improved environmental and hydraulic data prompted the initiation of an updated evaluation of the 2007 Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (2007 FSEIS) recommended plan.

The Proposed Plan is the remaining flood damage risk reduction feature of the Yazoo Basin, Yazoo Backwater, Mississippi, Project, which includes both structural and nonstructural features including a 14,000 cubic feet per second pump station, with a year round pump elevation of 87.0 feet, National Geodetic Vertical Datum 29 (NGVD), located near Deer Creek. The nonstructural flood damage reduction feature includes acquisition and reforestation/conservation features on up to 2,700 acres of agricultural lands at or near elevation 87.0 feet, NGVD, through perpetual easements from willing sellers only. The Proposed Plan also includes a revised mitigation plan to compensate for unavoidable environmental impacts and a comprehensive monitoring and adaptive management plan that presents practical solutions to an array of environmental challenges within the Yazoo Study Area as well as the Yazoo Basin. This document is intended to supplement the Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement

The Final SEIS No. 2 is available online at the USACE, Vicksburg District website at: <https://www.mvk.usace.army.mil/missions/programs-and-project-management/project-management/yazoo-backwater-report/>. The 30-day review period will begin Friday, December 11, 2020 and end Monday, January 11, 2021.

For further information, please contact Mr. Kenneth Parrish via e-mail at [Kent.D.Parrish@usace.army.mil](mailto:Kent.D.Parrish@usace.army.mil) or telephone at (601) 631-5006. You may also request additional information by mail to the District Engineer, USACE, Vicksburg District, 4155 Clay Street, Vicksburg, Mississippi 39183-3435 or e-mail [YazooBackwater@usace.army.mil](mailto:YazooBackwater@usace.army.mil).

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Troy G Constance  
Chief, Regional Planning and Environmental  
Division South  
US Army Corps of Engineers





DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG  
DISTRICT 4155 CLAY STREET  
VICKSBURG, MS 39183-3435

December 11, 2020

Ms. Mary Walker  
U.S. Environmental Protection Agency Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dear Ms. Walker:

The U.S. Army Corps of Engineers (USACE), Vicksburg District, appreciates your agency's review and submission of comments on the Draft Supplement No. 2 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement dated November 30, 2020. Please accept the Vicksburg District's enclosed responses.

If you have any questions or would like to discuss in more detail, please contact Mr. Kent Parrish, the Project Manager, at (601) 631-5006, or Ms. Sara Thames, the Environmental Manager, at (601) 631-5894.

Sincerely,

 Digitally signed by  
HILLIARD, ROBERT ADAMS.106  
6465175  
Date: 2020.12.11 15:07:42 -06'00'

Robert A. Hilliard  
Colonel, Corps of Engineers  
District Commander

Enclosure



## **EPA Comment Responses**

### **I. Clean Water Act Section 404(b)(1) Evaluation:**

**EPA:** Based upon our review of the DSEIS, it appears that the USACE has not completed a jurisdictional determination for the areas of project impact within the Yazoo Backwater Area (YBA) consistent with current regulations.

#### **USACE response:**

Within the direct impact area (i.e., the area within the footprint of the pumping plant and associated infrastructure), a jurisdictional wetland delineation was conducted by staff from the Vicksburg District Regulatory Branch and the results of that assessment are as follows: up to 2.01 acres of Jurisdictional Emergent Wetlands, 72.73 acres of Excluded Emergent Wetlands, 58.71 of Forested Wetlands and 24.58 of Excluded Scrub-Shrub CRP Wetlands at the Deer Creek Pump construction site along with 23.14 acres of Jurisdictional Emergent Wetlands at the Supplemental Steele Bayou Borrow Area. As outlined in the Wetlands Appendix, the indirect impact area (i.e., those areas subject to potential decreases in flood duration), the USACE Vicksburg District determined that areas occurring within the 2-year floodplain that display flood duration during  $\geq 5.0\%$  (i.e.,  $\geq 14$  days) of the growing season will be the focus of the wetlands assessment. Within that area, the wetlands assessment assumed that all forested and agricultural lands were wetlands.

This represents a conservative approach to determine indirect impacts because many forested, agriculture, pasture, and other areas within the Yazoo Study Area would not meet the hydrophytic vegetation, hydric soils, and/or wetland hydrology criteria outlined in Environmental Laboratory (1987) and the delineation procedures detailed in USACE (2010). Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), ed. J.S. Wakeley, R. W. Lichvar, and C.V. Noble. ERDC/EL TR-10-20 Vicksburg, MS: U.S. Army Engineer Research and Development Center. Additionally, this approach incorporates any forested and agricultural lands within the 2-year floodplain and  $\geq 5.0\%$  flood duration intervals that are non-wetlands, may be considered isolated wetlands, meet the definition of prior converted croplands, or may otherwise be excluded from consideration during a traditional wetland delineation and functional assessment. The presence of non-wetlands within the Yazoo Study Area was reported in the 2007 FSEIS when a number of areas occurring within the  $\geq 5.0\%$  flood duration intervals were determined to be non-wetlands using traditional wetland delineation techniques (e.g., field indicators of hydric soils, hydrophytic vegetation, and wetland hydrology). For example, EPA data collected in the Yazoo Study Area within areas exhibiting  $\geq 5.0\%$  flood duration zones reported that five of the 52 data points (9.6%) examined were determined to be non-wetlands. Based on this information, the execution of a full, traditional wetland delineation within the assessment area would result in a decrease in the extent of wetlands, the estimated



wetland functional capacity associated with those wetlands under the no-action alternative, and the compensatory mitigation required to offset impacts to wetland resources under the Proposed Plan. While we acknowledge that the assumption that all of the forested and agricultural lands in the assessment area meet the wetland criteria outlined in the associated regulatory guidance documents, the selected approach 1) ensures that no wetlands in the assessed area were not accounted for and 2) very likely resulted in an overestimation of wetlands in the assessed area and associated compensatory mitigation requirements.

The USACE Vicksburg District determined that those wetlands exhibiting a minimum of 14 days duration of flood inundation at a frequency of 5 years in 10 would be included in the wetlands assessment. This determination was made in accordance with the guidance in the 1987 US Army Corps of Engineers Wetland Delineation Manual and associated guidance documents that established the 14 day minimum criteria for wetland hydrology. Areas that experience less than 14 days of flood inundation in at least 5 years in 10 would not meet the wetland criteria as a result of flooding. Thus, only the subset of lands that are inundated by flooding for  $\geq 14$  days (i.e., the minimum wetland hydrology duration threshold) occurring within the 2-year floodplain (i.e., those with a flood frequency return interval of 5 years in 10) were considered during the assessment of potential impacts to wetland resources.

Notably, the Vicksburg District acknowledges the presence of wetlands outside of the 2-year floodplain elevation and in areas that experience  $< 14$  days of flood inundation, but those wetlands are sustained by precipitation. The project will not have any impact on precipitation or the wetland functions provided by wetlands outside the area of influence of the project.

Additional text has been added to the Engineering Appendix and cross-referenced with the Wetlands Appendix to provide more details on the rationale used to select the areas included in the assessment of wetland resources.

## **A. Section 230.10(c) – Evaluation of Significant Degradation**

### **1. Wetlands:**

**EPA:** EPA recommends that the Corps complete a full delineation of the scope of the impacts to Waters of the United States under existing regulations.

### **USACE response:**

Based on the information in the response directly above, the execution of a full, traditional wetland delineation within the assessment area would result in a decrease in the extent of wetlands, the estimated wetland functions associated with those wetlands under the no-action alternative, and the compensatory mitigation required to offset



impacts to wetland resources under the Proposed Plan. While we acknowledge that the assumption that all of the forested and agricultural lands in the assessment area meet the wetland criteria varies from a more traditional wetland delineation approach, the selected approach 1) ensures that no wetlands in the assessed area were not accounted for and 2) very likely resulted in an overestimation of wetlands in the assessed area and associated compensatory mitigation requirements.

**EPA:** EPA recommends that the wetland impact analysis evaluates the proposed project's potential effects on wetlands based on expected changes in flood duration and frequency. This analysis should also identify the scope of wetlands and other waters of the U.S. that will experience direct, secondary, and cumulative effects.

**USACE response:**

As described in the Wetlands Appendix, the FSEIS considered expected changes in flood durations with the areas identified for inclusion in the assessment. This included an analysis of both direct and indirect (i.e., secondary) impacts. A separate analysis of cumulative effects was not conducted as part of the wetlands assessment. However, because the wetland functional assessment incorporates a number of landscape scale (e.g., data on surrounding landuse) and on-site variables (e.g., forest successional stage) from existing forested, agricultural, and established mitigation sites the HGM approach inherently reflects cumulative effects that have influenced the current conditions (or will influence future conditions) of wetlands within the study area. As such, some level of cumulative impacts analysis are included in the wetlands assessment although not explicitly.

**EPA:** EPA recommends that the FSEIS evaluate how the pumps project would impact wetlands that currently experience  $\geq 7$  days of flood inundation.

**USACE response:**

The USACE Vicksburg District determined that those wetlands exhibiting a minimum of 14 days duration of flood inundation at a frequency of 5 years in 10 would be included in the wetlands assessment. This determination was made in accordance with the guidance in the 1987 US Army Corps of Engineers Wetland Delineation Manual and associated guidance documents that established the 14 day minimum criteria for wetland hydrology. Areas that experience less than 14 days of flood inundation in at least 5 years in 10 would not meet the wetland criteria as a result of flooding. Thus, only the subset of lands that are inundated by flooding for  $\geq 14$  days (i.e., the minimum wetland hydrology duration threshold) occurring within the 2-year floodplain (i.e., those with a flood frequency return interval of 5 years in 10) were considered during the assessment of potential impacts to wetland resources.



Notably, the Vicksburg District acknowledges the presence of wetlands outside of the 2-year floodplain elevation and in areas that experience <14 days of flood inundation, but those wetlands are sustained by precipitation. The project will not have any impact on precipitation or the wetland functions provided by wetlands outside the area of influence of the project. Additional text has been added to the Engineering Appendix and cross-referenced with the Wetlands Appendix to provide more details on the rationale used to select the areas included in the assessment of wetland resources.

**EPA:** EPA recommends that the wetland impact analysis evaluate all flooded wetlands that are in the 5-year floodplain.

**USACE response:**

Additional text has been added to the Engineering Appendix and cross-referenced with the Wetlands Appendix to provide more details on the rationale used to select the areas included in the assessment of wetland resources. The text discusses why the 5-year floodplain was not incorporated into the assessment, highlighting that the available data demonstrates the limited effect of flooding on wetland hydrology in the five year floodplain. For example, all ground water monitoring wells above the 2-year floodplain, but within the 5-year floodplain either failed to exhibit wetland hydrology or precipitation provided the sole source of wetland hydrology.

**EPA:** EPA recommends that the FSEIS evaluate how many wetlands would no longer be within the 2-year and 5-year floodplains with the pumps project implemented.

**USACE response:**

Table 69 in Wetlands Appendix provides the anticipated shifts in flood duration for the areas included in the wetlands assessment. Additional text has been added to the Engineering Appendix and cross-referenced with the Wetlands Appendix to provide more details on the rationale used to select the areas included in the assessment of wetland resources. The text discusses why the 5-year floodplain was not incorporated into the assessment, and as a result no information on areas outside the 5-year floodplain have been included in the FSEIS.

**EPA:** EPA recommends that the Hydrogeomorphic (HGM) assessment classify wetlands in the YBA according to Smith and Klimas (2002), evaluate the anticipated functional impacts to these wetlands, including when impacts convert wetlands from one subclass to another, and ensure that proposed compensatory mitigation addresses the specific functional losses of impacted wetlands.



**USACE response:**

Additional text has been added to the Engineering Appendix and cross-referenced with the Wetlands Appendix to provide more details on the rationale used to select the HGM wetland subclasses applied in the assessment of wetland resources. It includes the following text: "The HGM model developed for application in the Yazoo Study Area addresses a number of wetland subclasses. For the purpose of the current assessment, all wetlands are assumed to occur within the Riverine Backwater subclass. This selection was made because 1) the wetlands examined occur within the 2-year flood frequency interval and 2) the Riverine Backwater subclass encompasses the full suite of wetland functions described in Smith and Klimas (2002).

Notably, the selection and application of other wetland subclasses that occur in portions of the Yazoo Study Area, such as Flats or Depressions, would decrease the estimated impacts to wetland resources (and associated mitigation requirements) because those wetland subclasses only provide a subset of the wetland functions provided by River Backwater wetlands. As a result, the assumption that all of the wetlands included in the assessment are Riverine Backwater wetlands represents the most conservative approach possible for selecting wetland subclasses."

**2. Fish and Other Aquatic Organisms**

**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation provide a full description of the analysis of impacts on fish and other aquatic organisms and clarify how the values in the spawning and rearing habitat assessment were determined, including the methodology, assumptions, calculations, and uncertainties.

**USACE response:**

Impacts on spawning and rearing fish were determined using EnviroFish 1.0. The output is Average Daily Flooded Acres (ADFA), which is an area equivalent to one acre that is inundated on average every day of a defined season for a specified number of years. The ADFAs were calculated using the elevation data and hydrologically modeled water surface elevation. A new dataset was used to calculate Average Daily Flooded Acres that included hydrologic data up to 2019 (1978 - 2019), updated 2018 NASS Landuse maps, and improved elevation mapping data (10-meter versus 30-meter resolution) compared to the 2007 FSEIS report. The acreage analysis area was constrained to lands within the 2-year flood frequency and the spawning and rearing season was defined as 1 March – 30 June. The aerial measure of inundation (ADFA) is multiplied by the appropriate Habitat Suitability Index (HSI) value in EnviroFish to output HUs with which to compare alternatives and annualized over the 50-year project life.

Seasonally flooded habitat types were delineated from satellite imagery and verified with ground-truthing to characterize the majority of floodplain landuse in the Yazoo



Study Area. The actual acres of each habitat type by stage elevation (i.e., stage-area curves) were entered into the EnviroFish software to calculate ADFAs. Habitat types are defined as follows:

1. Agriculture – all areas in which an agricultural product was grown including developed and pasture lands.
2. Fallow – agricultural lands that have been abandoned where there is a prevalence of herbaceous, non-woody cover.
3. Bottomland hardwoods – all forested areas.

For this application, only agriculture, fallow, and bottomland hardwood cover types within the 2- year flood frequency were considered. The percentages of each land use in the Yazoo Study Area were based on 2018 Landsat imagery. Bottomland hardwoods represented the highest landuse percentage (76%), followed by agricultural (12%) and fallow fields (4%). The channel and other waterbodies represented 8% of the 2-year floodplain. An increase in bottomland hardwoods between the 2007 and 2020 assessment in the 2-year floodplain was largely due to reforestation.

EnviroFish calculates ADFAs for spawning and rearing separately. Spawning acres were restricted to a minimum depth of 1.0 foot, maximum depth of 10 feet and restricted to lands flooded for a minimum duration of 8 consecutive days. A minimum water depth of 1.0 foot allows adults to access shallow, flooded areas; a water depth less than 1.0 foot is not considered realistic due to physical limitations in the spawning process. Flood duration of at least 8 consecutive days ensures suitable time for nest construction and other spawning activities by the adults and recognizes that shorter durations may result in the eggs becoming stranded and desiccated if water recedes too quickly.

Alternatively, if the water recedes too rapidly off the floodplain, organic matter, nutrients, and newly hatched aquatic organisms may be carried into the river instead of remaining in the floodplain and permanent backwaters. The minimum one foot, 8-day duration rule is considered a conservative value to delineate spawning requirements for warm water fish species found in the Mississippi River basin. This rule guarantees an effective spawning window, emphasizes longer development times, and provides a margin for temporal variation in spawning activities (i.e., adult movement onto the floodplain, nest construction, and guarding/dispersal of fry). Rearing acres were calculated for water depths of 0.1 - 20 feet with a flooding minimum duration of 1 day. Once hatched, rearing fishes, including yolk-sac and post yolk-sac larval phases, have volitional behaviors to change locations within the floodplain. The maximum depth of 20 feet assumes that mostly channel habitat occurs beyond 20 feet in depth and hypoxia occurs in deeper water during inundation.

The majority of species that spawn and rear in riverine floodplains are pre-adapted to structurally complex habitats such as bottomland hardwoods. Therefore, cleared lands have less value for spawning and rearing habitat and eggs and larvae have a higher risk



of becoming stranded or preyed upon in cleared lands as floodwaters recede. The HSI values reflect this trend, with optimum conditions occurring for bottomland hardwoods (HSI = 1.0); intermediate values for fallow fields (HSI = 0.5); and the lowest value for cleared, agricultural lands (HSI = 0.2). These values represent a community-level perspective on the biological response (i.e., spawning and rearing) of the fishes of the Yazoo Study Area to flooding. Further information on HSI development and modeling spawning and rearing habitat in floodplains are provided in the EnviroFish 1.0 manual (Killgore et al. 2012), which was certified in October 2020 by the Ecosystem Restoration National Planning Center of Expertise for this project.

Because the Proposed Plan would reduce flooding within the Yazoo Backwater, loss in Average Annual Habitat Units between the No Action Alternative and the Proposed Plan was calculated and mitigation requirements determined to offset loss in aquatic habitat. This analysis made certain assumptions on the application of EnviroFish to calculate ADFAs:

1. Larval fish have the potential to utilize the same habitat as spawning sites. Larval fish have smaller physical dimensions that allow access to shallower (< 1.0 feet) water than physically available for spawning needs (typically  $\geq 1.0$  feet depth, 8 days duration). The EnviroFish software was used to define minimum and maximum allowable depths for spawning and/or rearing to accurately represent a specific situation.
2. Habitat acres were quantified for floodplain habitat only. This was done because the project would impact the extent of floodplain habitat with no/minimal effect on channel and other permanent aquatic habitat.
3. Many factors dictate the overall timing of the spawning and rearing period. Optimum conditions for spawning occur when the flood pulse and warmer temperatures are coupled. Although there are multiple variables that dictate when fishes will actually spawn, the model assumed that spawning takes place from 1 March to 30 June.
4. Flooded bottomland hardwoods in the 2-year flood frequency are the preferred spawning and rearing habitat. A 2-year frequency flood was used to evaluate hydrology and land use of the floodplain using the following assumptions:
  - a. Most fish species reach sexual maturity at age one or two. Thus, a flood that typically occurs once every two years is considered necessary to maintain reproductive populations in the basin. The more extreme hydrologic events may result in higher fish abundance, but do not represent flooding regimes that maintain baseline population levels over the life of the project (i.e., 50 year project life).
  - b. The life span of small-sized species is 2-3 years and some may only reproduce once. Thus, a flood frequency less than 2-years may result in successive reproductive failures by species with short life spans. Flood frequencies greater than two years are an overestimate of the usable floodplain utilized by species with short life spans. Larger-sized species can live up to 10 years, but those that utilize floodplains to reproduce on an annual basis require regular flooding to maintain population integrity.



**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation identify where values changed between 2007 and 2020 analyses and clearly explain to what extent and why these changes are the result of the application of new data/analysis, changes in the assumptions or framework of the assessment, changes in conditions on the ground, and/or other factors.

**USACE response:**

Three important differences in this analysis and the 2007 FSEIS analysis are: a revised period record, a higher resolution digital elevation model, and the use of the 2018 NASS landuse data. The revised period of record represents the entire time period when the Yazoo Backwater levee was in place. The 2007 FSEIS used a 30-meter resolution digital elevation model (30-meter DEM) and the current analysis uses a 10-meter resolution digital elevation model (10-meter DEM) that identified areas with ridge and swale topology or natural levees. The ridges and natural levees were not captured in the 30-meter DEM therefore the cumulative areal extent of flooding was greater using the 30-meter DEM as opposed to the improved 10-meter DEM used in this analysis. The combination of these three changes resulted in changes that have been seen in the current analysis. A breakdown of which feature caused what impacts would not be helpful to the current analysis. All assumptions have been documented in the appropriate appendices.

**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation clarify the assumptions and use of the weighting factor to reduce the loss of AAHUs in the 2020 spawning and rearing habitat impact analysis.

**USACE response:**

The relative value index (i.e. weighting factor) determines the ecological worth of the reforestation feature of compensatory mitigation and takes into account the true value of this effort on the aquatic environment. Reforestation has been the primary method of mitigating impacted aquatic floodplains habitat losses; however, monitoring studies have documented extensive hypoxia (low dissolved oxygen) in the Yazoo Study Area during inundation questioning the value of reforestation to fully address aquatic impacts. Additionally, long-term trends in fish species composition indicate little change in diversity despite previous reforestation and repeated flooding events. Additional reforestation is not expected to benefit aquatic resources since extensive hypoxia will continue to occur in the floodplain and channels. The 0.6 relative value index was determined by the percent difference in total abundance of larval and juveniles fishes in hypoxic (<3.0 mg/l) versus normoxic water collected with larval light traps within the Yazoo Study Area between 1990 and 2008. In other words, out of 100% of all individuals collected, 60% were collected in normoxic water and 40% were collected in hypoxic water. Those individuals collected in hypoxic water were mostly dead. The



assumption was that the 40% reduction in the abundance of larval and juvenile fishes indicates that reforestation will only partially compensate for impacts. Therefore, the RVI of 0.6 was used to decrease the functional value of reforestation due to hypoxia. However, environmental flow establishment with the supplemental low flow groundwater wells were assumed to offset negative impacts of hypoxia in the forested floodplain. These assumptions will be monitored in the Monitoring and Adaptive Management Plan.

### 3. Water Quality

**EPA:** The 2020 DSEIS includes a large amount of baseline water quality data from the Yazoo River Basin. Analysis of this water quality data focuses on current trends in low dissolved oxygen and high nutrient concentrations observed in the main stems of Steele Bayou and Big Sunflower Basins. This data has raised concerns regarding the degradation of water quality in the YBA. Previously, USACE recommended reforestation of up to 40,000 acres and maintaining higher minimum ponding levels of up to 3 feet behind the flood gates during low flow periods to address these water quality issues and provide benefits to fish and other aquatic organisms. However, portions of the 2020 DSEIS (Appendix F-8) now indicate that reforestation is not likely to improve water quality in ways that would improve support for fish and other aquatic organisms while other portions continue to indicate that wetland reforestation/restoration will “provide significant long-term benefits to water quality” (see Appendix L). The 2020 DSEIS also now indicates that maintaining higher ponding levels would be detrimental to fish and other aquatic organisms because of concerns regarding low dissolved oxygen. Statements about the water quality effects of reforestation and minimum ponding levels appear to reflect different views about strategies for addressing water quality concerns. The 2020 DSEIS also makes conflicting statements regarding whether the operation of the pumps would affect water quality, with some parts of the document indicating that construction and operation of the pumps “are not anticipated to cause long-term changes in the existing water quality within the study area” (Appendix L), while others state that operation of the pumps would improve current conditions regarding dissolved oxygen (e.g., Appendix I). These statements regarding water quality benefits from the operation of the pumps, are not supported by data to quantify beneficial or adverse effects.

**USACE response:** The Corps acknowledges that factors influencing water quality within the study area are complex. For example, while extended periods of flood inundation promote the Removal of Elements and Compounds function (e.g., denitrification and other processes) the presence of stagnant water for long periods also results in low dissolved oxygen concentrations that can impact habitat for some aquatic species. Further, the delivery of some functions (i.e., Export Organic Carbon) during extended periods of when stagnant floodwaters persist may exacerbate water quality problems by (for example) providing a substrate supporting microbial respiration that



further reduces dissolved oxygen concentrations. From Biochemical Oxygen Demand (BOD). These extended periods of stagnant water limit the ability for re-aeration through agitation. For the first few weeks of a typical backwater flood, water depth and temperature stratification slow the process of diffusion limiting the principal mechanism for oxygen transfer into the water column from the surface. This condition compounded with the increase Biochemical Oxygen Demand (BOD) exerted by the organic matter (leaf litter) on the unmixed water closer to the forest floor allows for severe DO depletion.

Reforestation of up to 2,700 acres (nonstructural feature) of current agricultural land and the acquisition of 2,405 acres (compensatory mitigation feature) will reduce erosion and increase the floodwater filtering capacity for sediment, pesticides, and nutrients. Completion of these features (reforestation) should improve water quality during most times of the year. However, during flood events the utilization of organic carbon from leaf litter will likely aggravate low DO conditions.

**EPA:** EPA recommends that the USACE include additional information describing the extent to which the pumps project and the wells would impact water quality. Evaluate whether operation of the pumps will adversely affect the existing low-flow problems (e.g., whether pumps may remove water at a faster rate than groundwater recharge).

**USACE response:**

14,000 cfs Pumps Project – Water Quality Impacts

The Yazoo Backwater Pumps will not increase the total loading of TP and TN to the Mississippi River. The timing of the nutrient loading to the Mississippi River will be increased by a few weeks however the overall mass should remain the same.

Implementation of the Yazoo Backwater Pump Project can significantly enhance the overall water quality in the Yazoo Backwater Area. Construction of the 14,000 cfs Backwater Pumps will help increase DO in the water column by minimizing the overall depth of a flood event thus improving diffusion from the surface water. Activation of the pumps will also draw water primarily from the bottom of the flood pool taking with it the most depleted DO concentrations. As the backwater pools grow deeper and sustain prolonged periods of stagnation, the suspended solids have an opportunity to settle out of the water column. This process provides for increased light transmission through the surface layer and increases algal production of algal productivity. As a result, DO concentrations begin to recover within the first 5 to 10 feet of surface water. This turnaround typically comes too late to provide habitat for aquatic species because they have either left the region or died from the extended period of poor conditions. The construction of the Yazoo Backwater Pumps would slightly reduce the overall settling time for suspended solids in the basin, but not before most of the settling has taken place. The reduced time frame should have a minimal impact on DO contributions from



primary productivity. As a result, DO concentrations begin to recover within the first 5 to 10 feet of surface water. This turnaround typically comes too late to provide habitat for aquatic species because they have either left the region or died from the extended period of poor conditions. The construction of the Yazoo Backwater Pumps would slightly reduce the overall settling time for suspended solids in the basin, but not before most of the settling has taken place. The reduced time frame should have a minimal impact on DOD contributions from primary productivity. The construction of the Yazoo Backwater Pumps would reduce this extended period of poor DO conditions lessening the impacts on aquatic species that would die or forced to leave the area. The combination of these effects should have an overall benefit to DO in the Yazoo Backwater Area during extended flood events.

Sediment disturbance during construction of the Yazoo Backwater Pump may cause temporary increases in turbidity and nutrient levels. Temporary decreases in light penetration from localized increases in turbidity could cause reductions in photosynthesis. This could result in temporary, localized decreases in DO concentrations. Such increases would be of short duration. The DO and nutrient levels should return to preconstruction concentrations once the turbidity clears and photosynthesis rates return to normal.

#### Supplemental Low Flow Wells – Water Quality Impacts

The construction of supplemental low flow groundwater well sites built in the headwaters of the two basins will help to supplement needed base flow in the major arteries of the systems allowing for an increase in habitat quality during the late summer and fall critical low flow periods. These well sites will provide a positive benefit to the overall low DO conditions observed during the warmer months. These warmer months typically coincide with the low flow periods in the primary tributaries of the two basins. The supplemental water provided should stimulate re-aeration through agitation minimizing the presence of stagnant intermittent pools in the channels. The cooler groundwater temperature will also have a positive effect on the DO saturation when mixed with surface waters during the warmer months.

During the late summer and early fall months, minimal flow rates in many of the headwater streams of the Yazoo Basin were observed between 1.0 to 10.0 cfs. The addition of up to 5.0 cfs from each of the 34 supplemental low flow groundwater wells will significantly increase the overall volume in the channels and expedite mixing times after the point of injection. Minimal turbidity values may increase at the point of injection. These increases should dissipate in a relative short distance downstream. There should be no problem with the mixing of ground water from the wells into the receiving streams.

The water extracted from the MRVA is known to have higher levels of iron concentrations. Currently there are more than 20,000 wells in use for agricultural



irrigation in the Delta portion of the Yazoo Basin. While the operation of these irrigation wells has had a significant contribution to Yazoo Basin via irrigation return flow, the surface water quality has not experienced a noticeable change. The ferrous iron pumped by each supplemental low flow groundwater well will likely precipitate in the reaeration trough adjacent to the channel and should not have an adverse effect on stream water quality (may improve by removal of phosphorus). The clean groundwater taken from the MRVA has been found to be free of harmful contaminants and should have a positive impact on the overall water quality in the Yazoo Backwater watershed.

#### Potential Adverse Effect from Pumps Project on Groundwater Recharge

The paired groundwater - surface water gages at Anguilla, Mississippi show that the alluvial aquifer is fully charged thus there is no volume available for recharge during flood events. Groundwater recharge does not account for high losses to the overall flood volume. The Yazoo Area Backwater Plan calls for the construction of a 14,000 cfs pump at Deer Creek to reduce the flood impacts on the area by moving water over the backwater levee into the Yazoo River. The Pumps Project should not have an adverse effect on groundwater recharge in the south delta.

However some recharge could occur due to the supplemental low flow groundwater wells. These wells draw from the Mississippi alluvial aquifer which is recharged annually by the Mississippi River. This withdrawal will not further impair the levels of the aquifer in other areas in the Yazoo Mississippi Delta.

## **4. Cumulative and Secondary Effects**

**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation incorporate that the cumulative effects analysis considers the historic wetland losses/degradation in the Lower Mississippi River Valley, which has already lost over 80 percent of its bottomland forested wetlands (DOI 1988) and in the Mississippi Delta region in particular. For instance, the 2020 DSEIS finds that the completion of numerous flood control projects in the YBA has already lowered the median  $\geq 5.0\%$  flood duration elevation by approximately one to three feet resulting in impacts to the hydrology of tens of thousands of acres of wetlands in the YBA and the pumps project would result in additional impacts to tens of thousands of acres of wetlands in the YBA (2020 DSEIS, Appendix F-5). These effects contribute to habitat changes for a range of wildlife species (e.g., waterfowl, shorebirds, and/or aquatic dependent mammals) which have contributed to population declines and may impact the ability of some species to successfully migrate. We recommend that the cumulative effects analysis also consider these kinds of impacts on the productivity of the aquatic ecosystem.

**USACE response:** The 2007 SEIS included an assessment of the impacts to wetlands in four periods. Those periods were: 1900 to 1930, 1931 to 1957, 1958 to 1977, and



1978 to 1997. That assessment was based on the 2-year frequency 14-day duration flood for each of those periods. The aerial extent of flooding was based on the 30-meter DEM. The 1900 to 1930 period had the greatest extent of the 14-day duration flood, and it represented the period prior to any hydrologic changes. The 1931 to 1957 period represented the impacts of flood control measures on the Mississippi River, but it also represented the low flows observed in the 1930s and early 1950s. The GIS coverages from that analysis are no longer available and are out of date considering the availability of the 10-meter LIDAR. Using the new DEM, the aerial extent of the 14-day duration floods were 223,000 acres and 110,000 acres for the two periods. The current 14-day duration flood has an extent of 98,000 acres. This shows that the aerial extent of flooding has been impacted by past flood control projects in the basin. However, the EPA's EMAP estimate of total wetlands from the 2007 report was 216,000 acres. The fact is that the total extent of wetlands in the basin has remained relatively constant since 1900. It further emphasizes that flooding is not a critical feature to maintain these wetlands. As has been cited before, the major textbook on Bottomland Hardwood Wetland systems ('Wetlands' by Mitsch and Gosselink), clearly states that these systems are precipitation driven wetland systems. The wetland budget for these systems is controlled by the relationship between precipitation and evapotranspiration. When precipitation exceeds evapotranspiration, water builds up in the soils, but when evapotranspiration exceeds precipitation the surface water table drops, and the soils are dry. This trend is exactly what is observed in the 65 shallow groundwater monitoring wells in the project area, as reported in this document.

**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation incorporate the secondary effects analysis includes consideration of the effects on wetlands and other aquatic resources associated with the operation of the pumps project. Such effects can also cause changes to the availability of wildlife food resources (e.g., plant material, insects, amphibians), in addition to other wetland functional changes, and should be considered.

**USACE response:** We do not anticipate cumulative effects from the construction of the pumps, access to the pump system, the construction staging area, and borrow area. The majority of lands impacted by construction and deposition of fill material will be isolated from neighboring water bodies by dikes and existing levees. Any unavoidable impacts will be further minimized by the implementation of BMPs, such as silt screens, buffer zones, containment dikes, and erosion reduction techniques, in accordance with the State of Mississippi laws and regulations. A Stormwater Pollution Prevention Plan will be completed and submitted to MDEQ for approval prior to initiation of construction. All required environmental permits for construction and operation will be obtained prior to construction and all construction activities will adhere to state, federal, and local laws. Similarly, no secondary effects outside of the project footprint are anticipated due to a comprehensive Stormwater Pollution Prevention Plan and associated BMPs.



The wetlands assessment contains details on the indirect impacts (i.e., secondary effects) of the Proposed Plan, including impacts to the 1) Maintain Plant Communities and 2) Provide Wildlife Habitat functions included in the HGM assessment approach. These functions consider anticipated changes in vegetation species composition, and other ecological factors (i.e., forest structure, successional stage, habitat connectivity, etc) that influence wildlife food resources. As a result, the FSEIS currently contains information addressing this comment.

**EPA:** EPA recommends that the FSEIS and final 404(b)(1) Evaluation incorporate additional analysis consistent with 40 C.F.R. § 230.11(b) should be included in the FSEIS to evaluate the potential effects of the pumps project on water levels in the Yazoo River. According to Appendix L of the 2020 DSEIS, water levels on the Yazoo River side of the Deer Creek Pump site would be impacted by approximately 0.25 foot during pump operation, however Appendix G indicates the estimate was made on the Yazoo River side of the Steele Bayou site. We recommend that this be clarified.

- EPA recommends this analysis evaluate the effects of discharging water from the YBA into the Yazoo River on homes, communities, and/or infrastructure along the Yazoo River, particularly in areas downstream of the Deer Creek site's pump discharge point (e.g., Vicksburg).

**USACE response:** Much of the area between the pump site and the mouth of the Yazoo River is low lying crop and bottomland hardwood land. If conditions exist in the Yazoo Study Area such that pumping is necessary, this means the Yazoo River side of the levee is already at a level of 87 feet or higher. Once these stages are reached much of the low lying crop and forest lands adjacent to the lower Yazoo River are already inundated. Due to impacts from Mississippi River flooding in this area, most all infrastructure is constructed in excess of the 100 year flood plain which is much higher than the conditions required for pump operations stated above.

Furthermore, the 0.2-0.3 feet increase due to the pump operations is a computed estimate using a HEC-RAS model that has an error, given the terrain dataset used, of +/-0.5 feet. We feel in all actuality that the impacts on the Yazoo River due to pump operations will be nearly immeasurable due to the volume of water present when the pumps are operational. A worst case scenario was used to determine impacts. This scenario had the pumps running at their full capacity of 14,000 cfs, causing the maximum increase in water stages on the river side. Once constructed, the pumps will be methodically staged on as stages on the interior continue to increase. Therefore, the sudden discharge of 14,000 cfs to the river side of the project will not actually occur with real world pump operations. Once conditions are such that the full pump capacity is required, the river side of the project will be further inundated meaning the volume addition of 14,000 cfs has even less impact.



## **B. Section 230.10(d) – Evaluation of Minimization and Compensation Measures**

### **1. Compensatory Mitigation**

**EPA:** The Guidelines require appropriate and practicable compensatory mitigation to offset unavoidable impacts to waters of the U.S. and require that mitigation plans, such as the plan proposed in the 2020 DSEIS, be based on actual proposed mitigation sites. The USACE should provide a mitigation plan that is as detailed and specific as would be required by a private party applying to the USACE for a Section 404 permit.

**USACE response:** While the FSEIS does not identify specific location for reforestation, the Wetlands, Mitigation, and Monitoring and Adaptive Management Appendices indicate the conditions that will be present at mitigation tracts based on data from HGM wetland assessments conducted within the Yazoo Basin. That data demonstrates that of the 19 HGM assessment variables, only five of those variables differ at potential mitigation parcels. These five variables include 1) the size of the wetland tract associated with the mitigation parcel and the surrounding area, 2) the core area of the parcel, 3) the habitat connectivity of the parcel, 4) the flood frequency of the parcel, and 5) the flood duration of the parcel. The remaining 14 variables display the same HGM variable subindex scores at all agricultural lands in the project area that would be considered for mitigation establishment. For example, all potential mitigation parcels display the same degree of soil integrity and cation exchange capacity (as determined in the assessment approach), do not contain appropriate vegetation or vegetation characteristics (tree basal area and density, ground vegetation cover, snags, species composition), do not contain woody debris biomass, and display consistent of O- and A-horizon characteristics.

As a result, the selection mitigation sites will be guided by the values outlined in Tables 5-9 of the Wetlands Appendix which establish the minimum criteria used to target parcels for mitigation. As outlined in the FSEIS, mitigation sites should display a minimum tract size of 987 ha, a minimum core area of 49%, a minimum habitat connectivity of 50%, a minimum flood frequency of 4 years, and a minimum flood duration of 5% of the growing season. These values were derived from existing mitigation sites in the Yazoo Basin, demonstrating that the targets are achievable. The fact that the FSEIS provides specific data-based HGM metric values for mitigation site selection will ensure that appropriate mitigation lands will be acquired. As a result, we do not believe that identifying specific mitigation tracts is required at this time. However, if the conditions at mitigation tracts, once identified, differ from those provided in the FSEIS, the amount of mitigation acres (or types of mitigation activities initiated) will be adjusted as outlined in the Monitoring and Adaptive Management Appendix based on HGM data collected at each mitigation tract and subsequent monitoring conducted as the mitigation areas mature over time. Additionally, the Corps process requires that



more detailed analysis will be conducted during the project design phases, including refinements to the hydrologic analysis and other project components (to include mitigation) using a data-driven approach. This process will incorporate additional input from the Agencies to ensure that mitigation efforts achieve the outcomes required to offset impacts to wetlands and other natural resources resulting from project implementation.

**EPA:** EPA recommends that the USACE develop a compensatory mitigation plan based on specific compensation sites to determine compliance with Section 230.10(d) which addresses the following elements: compensatory mitigation project objectives, site selection factors, site protection instrument, baseline information at the impact site(s) and specific proposed compensation site(s), credit determination, work plan, maintenance plan, performance standards, monitoring requirements, long-term management plan, adaptive management plan, and financial assurances.

**USACE response:**

While the FSEIS does not identify specific location for reforestation, the Wetlands, Mitigation, and Monitoring and Adaptive Management Appendices indicate the conditions that will be present at mitigation tracts based on data from HGM wetland assessments conducted within the Yazoo Basin. That data demonstrates that of the 19 HGM assessment variables, only five of those variables differ at potential mitigation parcels. These five variables include 1) the size of the wetland tract associated with the mitigation parcel and the surrounding area, 2) the core area of the parcel, 3) the habitat connectivity of the parcel, 4) the flood frequency of the parcel, and 5) the flood duration of the parcel. The remaining 14 variables display the same HGM variable subindex scores at all agricultural lands in the project area that would be considered for mitigation establishment. For example, all potential mitigation parcels display the same degree of soil integrity and cation exchange capacity (as determined in the assessment approach), do not contain appropriate vegetation or vegetation characteristics (tree basal area and density, ground vegetation cover, snags, species composition), do not contain woody debris biomass, and display consistent of O- and A-horizon characteristics.

As a result, the selection mitigation sites will be guided by the values outlined in Tables 5-9 of the Wetlands Appendix which establish the minimum criteria used to target parcels for mitigation. As outlined in the FSEIS, mitigation sites should display a minimum tract size of 987 ha, a minimum core area of 49%, a minimum habitat connectivity of 50%, a minimum flood frequency of 4 years, and a minimum flood duration of 5% of the growing season. These values were derived from existing mitigation sites in the Yazoo Basin, demonstrating that the targets are achievable. The fact that the FSEIS provides specific data-based HGM metric values for mitigation site selection will ensure that appropriate mitigation lands will be acquired. As a result, we



do not believe that identifying specific mitigation tracts is required at this time. However, if the conditions at mitigation tracts, once identified, differ from those provided in the FSEIS, the amount of mitigation acres (or types of mitigation activities initiated) will be adjusted as outlined in the Monitoring and Adaptive Management Appendix based on HGM data collected at each mitigation tract and subsequent monitoring conducted as the mitigation areas mature over time.

The mitigation plan has been revised and includes the 12 components of a mitigation plan. The mitigation plan states ...“Plan selection criteria will be considered when ranking and selecting the mitigation projects.” These include:

- Risk & Reliability
- Environmental
- Time
- Cost Effectiveness
- Other Cost Considerations
- Watershed & Ecological Site Considerations

Additionally, the Corps process requires that more detailed analysis will be conducted during the project design phases, including refinements to the hydrologic analysis and other project components (to include mitigation) using a data-driven approach. This process will incorporate additional input from the Agencies to ensure that mitigation efforts achieve the outcomes required to offset impacts to wetlands and other natural resources resulting from project implementation.

**EPA:** EPA recommends that the compensatory mitigation plan be appropriately sized to offset aquatic resource functional losses.

**USACE response:**

A watershed approach for compensatory mitigation of adverse impacts of the project on fishery resources was considered during the planning process. A watershed approach recognizes the overall resource needs of the entire riverine system during all seasons rather than on-site mitigation that considers only locally important functions and values. Reforestation of agricultural lands has been the primary in-kind mitigation feature of the project area. However, despite over 30 years of reforesting lands in the project area, increases in fish diversity and/or richness has not been evident since monitoring began in the 1990's. Hypoxia within the floodplain during prolonged inundation periods has been identified as a primary deterrent to mitigating adverse impacts in the project area using reforestation. Therefore, reforesting agricultural lands in the project area does not fully compensate adverse impacts justifying consideration of out-of-kind mitigation that provides greater ecological importance to the overall aquatic resources in the watershed.



Low flows during late summer and autumn has been identified as a major contributor to depressed fishery resources in the watershed. Fish spawning and rearing during the spring must cope with low dissolved oxygen during prolonged flooding that reduces the ecological value of reforestation in the floodplain, and those individuals that do survive are further impacted by prolonged periods of low flows during the summer-fall thereby affecting annual fishery recruitment strength. Meaningful mitigation must consider the entire life cycle of fishes and the associated anthropogenic impairments to each life stage. These ecological issues can more effectively be addressed through both in-kind and out-of-kind mitigation.

In-kind mitigation will include reforestation up to 2405 acres in the Yazoo Project Area that fully compensates wetland, terrestrial, and waterfowl impacts and partially compensates aquatic impacts. In-kind mitigation requirements for aquatic resources calculated by EnviroFish was 3,998 and 4,553 acres for spawning and rearing, respectively. Mitigating rearing impacts will fully compensate for spawning impacts. However, these values were reduced to 2,399 and 2,732 acres for spawning and rearing when adverse impacts of hypoxia on reproductive success were included. Recognizing that low flows during the summer-autumn season provides greater ecological lift than simply more reforestation, 34 supplemental low flow groundwater wells are proposed to augment stream flows in multiple stream systems within the Big Sunflower-Steele Bayou drainage (i.e., environmental flows). Well field operation will occur on an annual basis regardless of flooding conditions in the lower reach of the Yazoo Project Area. Re-establishing perennial flow with supplemental low flow groundwater wells is considered out-of-kind mitigation, but will benefit all reaches from the headwaters to the mouth at Steele Bayou structure. This approach offsets the high mortality of larvae and juvenile fishes occurring in the spring during hypoxic events with increased survival rates of juvenile and adult fishes during autumn. Environmental flows also benefit mussels, including federally endangered species, as reproductive success in freshwater mussels is dependent on diverse and functional fish assemblages. Environmental flows benefit a total of 9,321 acres of streams, and based on a statistical habitat model, yields 1,678 AAHU's, which is a 40% increase compared to existing conditions. A maximum loss of 3,232 AAHU's for fish rearing without hypoxia calculated by Envirofish will be partially mitigated by reforesting 2,405 acres and the remainder will be compensated by the well fields. This analysis demonstrates that using both in-kind and out-of-kind mitigation fully compensates for adverse impacts of the project, takes a watershed approach rather than localized, and addresses all life stages of fishes during the year.

**EPA:** EPA recommends that site-specific mitigation plans for the proposed reforestation include HGM assessments of actual mitigation sites, and that specific functional losses be identified and offset (i.e., versus being combined in the Average Annual Functional Capacity Unit calculation).



**USACE response:**

Application of the sum of all functional scores approach was selected to determine impacts and mitigation requirements based on recommendations of Smith et al. (2013). This approach avoids the potential for one or two functions to dominate the mitigation and restoration at the expense of other functions. Additionally, Functional Capacity Scores are provided for each of the wetland functions in each land cover class and flood duration interval (e.g., Table 51 of the Wetlands Appendix). The Wetlands Appendix also presents the anticipated gains in each wetland function at mitigation sites. As a result, a full accounting of the wetland functional losses and compensatory mitigation gains throughout the 50 year period of analysis.

However, the Corps process requires that more detailed analysis will be conducted during the project design phases, including refinements to the hydrologic analysis and other project components using a data-driven approach. This process will incorporate additional input from the Agencies to ensure that mitigation efforts achieve the outcomes required to offset impacts to wetlands and other natural resources resulting from project implementation.

Also see the previous comment regarding compensatory mitigation referring to the need to assess specific mitigation sites.

**EPA:** EPA recommends that mitigation plans for the proposed wells include data and analysis that demonstrates the potential effectiveness of proposed mitigation in addressing water quality and biological impacts, including estimates regarding the quantity of water to be delivered to streams and the fate of water once it reaches the streams; operation and sustainability mechanisms to ensure that any water from the wells is not diverted for other purposes; and information regarding how well operation would be coordinated with the operation of the pumping station and flood gates.

**USACE response:** The mitigation plan states that “Habitat assessments will be completed on specific sites, once identified, utilizing the same USACE certified habitat assessment model(s) used to determine the functional impacts of the proposed action.”

The three primary basins that will be supplemented by these well sites are: The Steele Bayou Basin, the Upper Deer Creek Basin, and the Big Sunflower Basin. The Big Sunflower includes the Harris Bayou, Hushpuckena River, and Bogue Phalia sub-basins. The number of well sites and cumulative additional flow each basin is set to receive is as follows: Steele Bayou - 8 well sites (40 cfs), Upper Deer Creek - 5 well sites (25 cfs), and Big Sunflower - 21 well sites (105 cfs). A map depicting the locations of the proposed well locations along with the tributaries they will support is shown in Figure 4-3, Figure 4-4, and Figure 4.5 of the Water Quality Appendix. Coordinates for



each of the proposed wells is given in Table 4-1 of the appendix. It should be noted that each well site may move up to 1,000 feet up or down stream and/or to the opposing bank from the proposed locations. These relocations could result from unforeseen limitations with HTRW, cultural artifacts, power availability, or right of way concerns.

The period for critical flows in the YBA and corresponding use of the supplemental low flow wells comes after the agricultural growing season and notable decline in stream stages resulting from diminished irrigation return flow. The supplemental flow delivered to the streams should not be viewed as a water source for irrigation (via surface water) to nearby farming operations which could hamper the overall benefits to the project. Generally the operation of the supplemental low flow groundwater wells will be during the fall after the irrigation requirements for the crops season has ended. In addition, the District will work with MDEQ on the issuance of any surface water permits. The operational plan for the supplemental low flow groundwater wells will be structured based on adaptive management strategies tailored for low flow conditions when irrigation return flows have ceased. Depth transducers will be installed in each sub-basin, and pumping will be initiated or halted based on observed water surface elevations. Minimum flow targets will be established for downstream locations, and the number of wells operated will vary so target flows are achieved. The wells will not be operated during major flood events.

**EPA:** EPA recommends that as this proposal is out-of-kind mitigation to offset a portion of the pumps project's estimated impacts to fish spawning and rearing habitat, we recommend the FSEIS demonstrate "using the watershed approach described in the rule (see § 332.3(c) [§ 230.93(c)]) that out-of-kind compensatory mitigation will better serve the aquatic resource needs of the watershed."

**USACE response:** A watershed approach was used to develop the mitigation plan that includes reforestation in the lower watershed for fish spawning and rearing and establishment of environmental flows in the middle and upper watershed that benefits fish recruitment and mussel survival. Together, this approach benefits all life stages of fishes, protect mussels including listed species from dewatering events at low flows, and addresses the primary deterrents to improve fishery and other aquatic resources in the watershed. "This analysis demonstrates compliance with (40 C.F.R § 230.10(d)) using the watershed approach described in the rule (see § 332.3(c) [§ 230.9(c)]) that out-of-kind compensatory mitigation will better serve the aquatic resource of the watershed."

The technical appendices describe in detail past and projected measures of water quantity and quality and aquatic ecology at multiple watershed scales: basin-wide, stream reach and wetland functionality. Compensatory mitigation has been planned at multiple watershed sites. A wetland hydrogeomorphic approach will be utilized to



assess wetland functions under pre- and post-project conditions. Intensive measures and monitoring of water quantity and quality, fish spawning, rearing and feeding habitat, endangered species (e.g., mussels and pondberry) and wetland functional assessments are included in a comprehensive Monitoring and Adaptive Management Plan (M&AM). The M&AM includes operational scenarios to be tested and adjustments made based on performance standards outlined in the plan. In combination, the technical appendices and the M&AM will ensure the success and quality of aquatic resource restoration, establishment, and enhancement activities at both landscape and watershed scales. In turn, targets of success identified in the performance standards will confirm success.

**EPA:** EPA recommends that the Section 404(b)(1) Evaluation in the FSEIS should include the above referenced information as it is necessary to determine compliance with 40 C.F.R. § 230.10(d).

**USACE response:** A watershed approach for compensatory mitigation of adverse impacts of the project on fishery resources was considered during the planning process. A watershed approach recognizes the overall resource needs of the entire riverine system during all seasons rather than on-site mitigation that considers only locally important functions and values. Reforestation of agricultural lands has been the primary in-kind mitigation feature of the project area. However, despite over 30 years of reforesting lands in the project area, increases in fish diversity and/or richness has not been evident since monitoring began in the 1990's. Hypoxia within the floodplain during prolonged inundation periods has been identified as a primary deterrent to mitigating adverse impacts in the project area using reforestation. Therefore, reforesting agricultural lands in the project area does not fully compensate adverse impacts justifying consideration of out-of-kind mitigation that provides greater ecological importance to the overall aquatic resources in the watershed.

Low flows during late summer and autumn has been identified as a major contributor to depressed fishery resources in the watershed. Fish spawning and rearing during the spring must cope with low dissolved oxygen during prolonged flooding that reduces the ecological value of reforestation in the floodplain, and those individuals that do survive are further impacted by prolonged periods of low flows during the summer-fall thereby affecting annual fishery recruitment strength. Meaningful mitigation must consider the entire life cycle of fishes and the associated anthropogenic impairments to each life stage. These ecological issues can more effectively be addressed through both in-kind and out-of-kind mitigation.

To compensate for unavoidable losses to environmental resources from the construction, operation, and maintenance of the proposed project, compensatory mitigation requirements were calculated based on impacts from the entire calendar year, various flood frequencies, and variable flood depths. In-kind mitigation will



include reforestation up to 2,405 acres in the Yazoo Project Area at or below the 2-year floodplain, in fee title, that fully compensates wetland, terrestrial, and waterfowl impacts and partially compensates aquatic impacts. In-kind mitigation requirements for aquatic resources calculated by ENVIROFISH was 3,998 and 4,553 acres for spawning and rearing, respectively. Mitigating rearing impacts will fully compensate for spawning impacts. However, these values were reduced to 2,399 and 2,732 acres for spawning and rearing when adverse impacts of hypoxia on reproductive success were included. Recognizing that low flows during the summer-autumn season provides greater ecological lift than simply more reforestation, 34 supplemental low flow groundwater wells are proposed to augment stream flows in multiple stream systems within the Big Sunflower-Steele Bayou drainage (i.e., environmental flows). Well field operation will occur on an annual basis regardless of flooding conditions in the lower reach of the Yazoo Project Area. Re-establishing perennial flow with supplemental low flow groundwater wells is considered out-of-kind mitigation but will benefit all reaches from the headwaters to the mouth at Steele Bayou structure. This approach offsets the high mortality of larvae and juvenile fishes occurring in the spring during hypoxic events with increased survival rates of juvenile and adult fishes during autumn. Environmental flows also benefit mussels, including federally endangered species, as reproductive success in freshwater mussels is dependent on diverse and functional fish assemblages. Environmental flows benefit a total of 9,321 acres of streams, and based on a statistical habitat model, yields 1,678 AAHU's, which is a 40% increase compared to existing conditions. A maximum loss of 3,232 AAHU's for fish rearing without hypoxia calculated by ENVIROFISH will be partially mitigated by reforesting 2,405 acres and the remainder will be compensated by the well fields. This analysis demonstrates compliance with (40 C.F.R. § 230.10(d)) using the watershed approach described in the rule (see § 332.3(c) [§ 230.93(c)]) that out-of-kind compensatory mitigation will better serve the aquatic resource needs of the watershed. Using both in-kind and out-of-kind mitigation fully compensates for adverse impacts of the project, takes a watershed approach rather than localized, and addresses all life stages of fishes during the year.

## **2. Monitoring and Adaptive Management**

**EPA:** Consistent with current applications of adaptive management planning, the EPA recommends that the adaptive management approach involve the collection of scientific data on various resources within the YBA, including aquatic biology, water quality, and wetlands, and the use of that information to inform ongoing management of the project. Such a monitoring and adaptive management approach would evaluate both the effects and management of the pumps, as well as the proposed well fields.

### **USACE response:**

The M&AM plan (Appendix K) has a detailed plan regarding monitoring pre- and post-project conditions to determine the outcomes of the operational management objectives



and testable scenarios: 1) Operate the pumps, SLFG wells, and other infrastructure in a manner to minimize rapid dewatering (ramping) which would improve aquatic habitat and water quality without compromising flood control benefits through management of environmental flows. 2) Increase dissolved oxygen during backwater events through improved hydraulic circulation and advection. 3) Increase hydraulic circulation to improve sediment transport and bedform habitat quality and diversity. Performance Standards (Appendix K, Section 5.4) have been formulated to: 1) Measure the success of the aforementioned management objectives and make operational changes “adaptively”. 2) Identify reference stream conditions (i.e., best attainable conditions) within the same Ecoregion as the YBA. 3) Determine baseline (background) conditions in the YBA. By identifying reference stream conditions and baseline conditions, “desired target values for these metrics, and present additional management actions will be established.

Performance Standards (Appendix K, Section 5.4) have been formulated to: 1) Measure the success of the aforementioned management objectives and make operational changes “adaptively”. 2) Identify reference stream conditions (i.e., best attainable conditions) within the same Ecoregion as the Yazoo Backwater Area. 3) Determine baseline (background) conditions in the Yazoo Backwater Area. By identifying reference stream conditions and baseline conditions, “desired target values for these metrics, and present additional management actions will be established.

**EPA:** EPA recommends the FSEIS include a detailed monitoring and adaptive management plan that is based on a clearly defined pump operation and mitigation plan. The pump operation and mitigation plan will help inform ecological metrics that should be evaluated, identify desired target values for these metrics, and present additional management actions (e.g., regarding the pumps, well fields) that should be taken based on the monitoring results.

**USACE response:**  
**See comment above**

## **II. Other Issues**

### **A. Environmental Justice (EJ)**

**EPA:** EPA recommends for the study area, include a rationale for limiting the assessment to Issaquena and Sharkey Counties.

**USACE response:** Added language in SEIS explaining why the existing conditions is limited to two counties. The impacts assessment in the consequences section does describe impacts to the entire study area, which includes parts of four other counties and a parish in Louisiana.



**EPA:** EPA recommends for project benefits, clarify information regarding the magnitude and extent of the agricultural benefits to EJ communities and clarify the benefits groundwater wells will provide to subsistence fishing and hunting.

**USACE response:**

Not all of the benefits from reduced flood loss and reduced agricultural crop loss are attributed solely to EJ communities. However, benefits of reduced flood loss and ag crop loss are attributed to the study area of which a majority is EJ community. The language provided in the EJ section regarding the effect of groundwater wells is taken from other resource sections, including wetlands and aquatic resources. Habitat created is the justification for a positive indirect impact to subsistence fishing and hunting.

**EPA:** EPA recommends to discuss any potential impacts to EJ communities downstream of the pump site receiving flood water discharges.

**USACE response:** Added language describing discharge impacts to Yazoo and Mississippi Rivers, which is expected to be very minimal and therefore minimal impacts to EJ communities downstream outside of study area.



Message

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**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 6/17/2020 6:40:53 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Yes, I will take care of it now.

bf

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, June 17, 2020 2:39 PM  
**To:** Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** FW: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Brian,

Can we put these into the system for response.

Lee

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Wednesday, June 17, 2020 2:37 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Hello Mr. Forsgren and Ms. Mejias,

I hope this email finds you healthy and doing well.

I wanted to share with you a copy of the letter (attached) that Audubon and several partners submitted in response to the U.S. Army Corps of Engineers' Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Yazoo Pumps. Given its large file size, [Appendices B-I are downloadable here](#). Also attached is our press release that highlights our main concerns.

Our organizations strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

Our letter urges the Corps to abandon its misguided efforts to build the destructive, ineffective Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate flood risk reduction benefits to affected communities in the Yazoo Backwater Area while restoring this ecologically critical region - including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

We believe the Corps' effort is prohibited by EPA's 2008 Final Determination and that the Yazoo Pumps may not be - and should not be - constructed. Furthermore, the Corps' refusal to examine other alternatives violates the National Environmental Policy Act, several Water Resources Development Act provisions, the Clean Water Act, and the Endangered Species Act.



Over 100 national, state and local conservation and public interest organizations representing millions of members and supporters delivered a letter to the Corps reinforcing this urgent message. [\[View this letter here.\]](#)

Thirty-eight thousand concerned Mississippians and Americans from across the country accompanied this broad chorus by sending electronic letters to the Corps.

I hope this information is helpful to you. Please do not hesitate to reach out for more details or with questions.

Kind regards,

Jill Mastrototaro

---

**Jill Mastrototaro**

Policy Director

504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



Message

---

**From:** Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**Sent:** 12/7/2020 2:07:22 PM  
**To:** Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Yazoo Final Supplemental EIS Filed

Hi Everyone,

The Corps has filed the Supplement No. 2 to the 1982 Yazoo Area Pump Project Final EIS with EPA. It should be published in the Federal Register by Friday, December 11, 2020. Comments are due on January 11, 2020. When we have additional information, our senior leaders will share that with you.

Thanks,

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/30/2020 5:24:44 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Draft Yazoo comment letter  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-dlf.msw3.docx

Hi Mandy,

Attached is the draft Yazoo comment letter. It is still being worked on, most notably Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) I expect to get something on this later today, but wanted to send the current document now so you could review it. I expect most of it will remain as is, with changes in the cover letter and at the opening portion of the appendix based upon input from David/OGC. The comments are due today.

Please let me know if you have questions/concerns.

Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 5/26/2020 9:11:11 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Yazoo  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_05-26-20.docx

INTERNAL/DELIBERATIVE

Please take a look at page 13 and let me know if you are ok.

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Blevins, John [Blevins.John@epa.gov]  
**Sent:** 10/22/2020 7:57:16 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]  
**CC:** Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Allenbach, Becky [Allenbach.Bekky@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Axelrod, Julie [Axelrod.Julie@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Abrams, Nancy [Abrams.Nancy@epa.gov]  
**Subject:** Yazoo Backwater EIS draft schedule  
**Attachments:** Yazoo DEIS Schedule - for review.xlsx  
  
**Importance:** High

All- As discussed, attached is a draft schedule for moving the Yazoo draft EIS project to completion. Please review and provide any comments to Mark Fite and copy me. We can add additional detail as needed. I recognize that the schedule is fluid and prone to change as we work under the tight timeframe. We will update the schedule as needed and will send out update as appropriate.

Thanks to all for the help on this project.

John

John Blevins  
Acting DRA  
US EPA Region 4  
980 College Station Road  
Athens GA 30605

Ex. 6 Personal Privacy (PP) cell  
706-355-8549 office  
404-562-8231 (Atlanta Office number)

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*LSA&D Vision Statement: To be a solutions oriented organization, and seen as a leader in sound science through innovation, responsive customer service, and cutting-edge expertise.*

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-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Friday, October 16, 2020 12:21 PM  
**To:** R4RA Calendar; Walker, Mary; Ashbee, Blake; Gettle, Jeaneanne; Blevins, John; Palmer, Leif; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Rubini, Suzanne  
**Cc:** Fite, Mark; Kajumba, Ntale; Ainslie, William; Creswell, Michael; Kaiser, Russell; Barger, Cindy; Goodin, John; Frazer, Brian; Neugeboren, Steven; Wehling, Carrie; Nalven, Heidi; Ghosh, Mita; Hicks, Matt; Allenbach, Becky; McGill, Thomas; Calli, Rosemary; Wheeler, Kevin; Axelrod, Julie; Tomiak, Robert; Simons, Andrew; Marshall, Tom; Hoppe, Allison; Abrams, Nancy



**Subject:** (Attachments and Call-in added) Yazoo Backwater EIS

**When:** Tuesday, October 20, 2020 9:00 AM-9:45 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Microsoft Teams Meeting

---

## Join Microsoft Teams Meeting

Ex. 6 Personal Privacy (PP) United States, Atlanta (Toll)

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By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

---



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 8/3/2020 1:04:47 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo

Great – We will schedule it. I'll ask Belinda to set a call at 1:00 - and it should be brief!

Thank you both.  
Mary

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Monday, August 3, 2020 8:48 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Yazoo

In that window, I could do 1:00-1:30.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, August 3, 2020 8:34 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** RE: Yazoo

Sure. I am open from Noon till Senior Staff at 2:00 pm.

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Monday, August 3, 2020 8:10 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo

Hi David and Lee,

Would you have a few minutes for me to discuss Yazoo with you? If you're open, I'll ask Belinda to work a brief call for the three of us – certainly not more than 15-20 minutes.

Thanks  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW



Atlanta, GA 30303  
Tel: (404) 562-8357



**Subject:** Yazoo Backwater EIS  
**Start Time:** 2020-10-20T09:00:00-04:00  
**End Time:** 2020-10-20T09:45:00-04:00



Message

---

**From:** Mastrototaro, Jill [Jill.Mastrototaro@audubon.org]  
**Sent:** 6/17/2020 6:36:55 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Conservation Orgs Letter on Yazoo Pumps Scoping SEIS  
**Attachments:** Conservation Organizations\_Yazoo Pumps Scoping Comments(w Resilience Alt)\_Final\_6-15-20.pdf; Press Release\_Conservation Groups\_Yazoo SEIS\_6-16-20.pdf

Hello Mr. Forsgren and Ms. Mejias,

I hope this email finds you healthy and doing well.

I wanted to share with you a copy of the letter (attached) that Audubon and several partners submitted in response to the U.S. Army Corps of Engineers' Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Yazoo Pumps. Given its large file size, [Appendices B-I are downloadable here](#). Also attached is our press release that highlights our main concerns.

Our organizations strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

Our letter urges the Corps to abandon its misguided efforts to build the destructive, ineffective Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate flood risk reduction benefits to affected communities in the Yazoo Backwater Area while restoring this ecologically critical region - including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

We believe the Corps' effort is prohibited by EPA's 2008 Final Determination and that the Yazoo Pumps may not be - and should not be - constructed. Furthermore, the Corps' refusal to examine other alternatives violates the National Environmental Policy Act, several Water Resources Development Act provisions, the Clean Water Act, and the Endangered Species Act.

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Thirty-eight thousand concerned Mississippians and Americans from across the country accompanied this broad chorus by sending electronic letters to the Corps.

I hope this information is helpful to you. Please do not hesitate to reach out for more details or with questions.

Kind regards,

Jill Mastrototaro

---

**Jill Mastrototaro**  
Policy Director  
504.481.3659

**Audubon Mississippi**  
PO Box 2026  
Ridgeland, MS 39158  
<http://ms.audubon.org/>



American Rivers ♦ Audubon Mississippi ♦ Healthy Gulf  
National Audubon Society ♦ Sierra Club ♦ Sierra Club Mississippi

Scoping Comments in Response to  
Notice of Intent to Prepare Supplemental Environmental Impact Statement  
for the Yazoo Area Pump Project, 85 Fed. Reg. 21218 (April 16, 2020)

June 15, 2020

Delivered by Hand and by Email to the Army Corps of Engineers: [YazooBackwater@usace.army.mil](mailto:YazooBackwater@usace.army.mil)  
Delivered by Email to the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service



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Attachment C: List of TMDLs in the Yazoo Backwater Area	
Attachment D: Groundwater Recharge Study	
Attachment E: Lower Mississippi Valley Joint Venture Conservation Priorities Study	
Attachment F: Comments on the 2008 Clean Water Act Final Determination	
Attachment G: Nutter & Associates Study	
Attachment H: Valuing Ecosystem Services from Wetlands Restoration in the Mississippi Alluvial Valley	
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American Rivers, Audubon Mississippi, Healthy Gulf, National Audubon Society, Sierra Club, and Sierra Club Mississippi (collectively, the Conservation Organizations) appreciate the opportunity to provide scoping comments in response to the Notice of Intent to Prepare Supplemental Environmental Impact Statement for the Yazoo Area Pump Project, dated April 16, 2020 (85 Fed. Reg. 21218).<sup>1</sup>

The Conservation Organizations call on the U.S. Army Corps of Engineers (Corps) to abandon the Proposed Action, a falsely labeled “new project proposal” to build the Yazoo Pumps. That Proposed Action is prohibited by the 2008 Clean Water Act § 404(c) Final Determination and may not be—and should not be—constructed. The Corps should instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate benefits to the communities in the Yazoo Backwater Area while restoring this ecologically critical region.

## General Comments

The Notice of Intent makes clear that the sole purpose of the supplemental environmental impact statement (SEIS) is to attempt to justify construction of the environmentally devastating Yazoo Backwater Pumps project—a project prohibited by the Yazoo Pumps 2008 Clean Water Act § 404(c) Final Determination.<sup>2</sup> The Corps’ attempt to build an already-vetoed project is as unprecedented as it is unacceptable. Tragically, this effort also dangles a false promise of hope to the people of the Yazoo Backwater Area by perpetuating a demonstrably untrue narrative that the Yazoo Pumps are designed to, and somehow magically will, protect communities from flooding.

As fully documented in the record that supports the 2008 Clean Water Act Final Determination, the Yazoo Pumps are an agricultural drainage project designed to allow increased agricultural production on marginal lands that have always flooded. More than 80% of the project’s benefits come from agricultural intensification that, at most, will benefit a handful of industrial sized farms that already receive massive farm subsidy payments.

The Yazoo Pumps are not designed to protect people, homes, or communities—and they will not do so. Indeed, a recent Corps analysis found that even under the best-case scenario, two-thirds of the Yazoo Backwater Area—347,000 acres during the flood of 2019—would still flood with the Yazoo Pumps in place. The Corps’ own new partial assessment of wetland impacts shows that, at the absolute minimum, the Yazoo Pumps will destroy tens of thousands of acres of wetlands that can store billions of gallons of floodwaters. In the process, the Pumps will discharge 6.2 million gallons of water per minute into the Yazoo River during flood events, significantly increasing flood risks for downstream communities.

Wetlands that will be drained and damaged by the Yazoo Pumps are “some of the richest wetland and aquatic resources in the nation,” and include “substantial tracts of highly productive bottomland hardwood forests.”<sup>3</sup> These ecologically rich wetlands provide vital habitat in the heart of the Mississippi

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<sup>1</sup> Some of the Conservation Organizations will also be submitting companion comments that supplement the information made in this letter and have joined additional, less technical comment letters.

<sup>2</sup> U.S. Environmental Protection Agency, Final Determination of The U.S. Environmental Protection Agency’s Assistant Administrator for Water Pursuant to Section 404(C) of the Clean Water Act Concerning the Proposed Yazoo Backwater Area Pumps Project, Issaquena County, Mississippi (August 31, 2008) (referred to hereafter as the “2008 Clean Water Act Final Determination”).

<sup>3</sup> 2008 Clean Water Act Final Determination at i to iii.



River flyway, supporting more than 450 species of birds, fish and wildlife. Many thousands of acres of these wetlands are located in National Forest and National Wildlife Refuge lands, state-owned conservation lands, lands enrolled in federal conservation programs, and lands purchased and restored as mitigation for previously constructed federal water projects—lands that taxpayer dollars have long paid to protect and manage for people and wildlife. The wetlands that will be drained also “protect and improve water quality by removing and retaining pollutants, temporarily store surface water, maintain stream flows, and support aquatic food webs by processing and exporting significant amounts of organic carbon,”<sup>4</sup> among many other benefits.

In 2008, the George W. Bush administration used its Clean Water Act authority to veto the Yazoo Pumps to prevent “unacceptable damage” to many tens of thousands of acres of these hemispherically significant wetlands. The veto was based on the Corps’ own determination that the project would drain at least 67,000 acres of wetlands; however, EPA and an independent hydrologic review found that the Pumps would likely damage up to 200,000 acres of ecologically significant wetlands—an area larger than all five boroughs of New York City.

Despite this longstanding veto, and restoration and protection of tens of thousands of additional acres of wetlands in the Yazoo Backwater Area since the veto was issued, the Notice of Intent explicitly rejects evaluation of any alternative other than the Proposed Action—a project that is virtually identical to the project vetoed in 2008 and that clearly falls under the explicit terms of the veto. The 2008 Clean Water Act Final Determination was upheld the U.S. District Court for the Northern District of Mississippi and the U.S. Court of Appeals for the Fifth Circuit.

The Corps’ refusal to examine other alternatives violates the National Environmental Policy Act (NEPA), several the Water Resources Development Act provisions, the Clean Water Act, and the Endangered Species Act. NEPA requires a rigorous exploration and objective evaluation of “all reasonable alternatives.”<sup>5</sup> Several Water Resources Development Acts require the Corps to consider non-structural alternatives and practicable “natural infrastructure alternatives.”<sup>6</sup> The Water Resources Development Act of 2007 also directs that all water resources projects are to reflect national priorities by “protecting and restoring the functions of natural systems.”<sup>7</sup> The Clean Water Act 404(b)(1) Guidelines prohibit the Corps from approving a civils works project alternative unless the Corps demonstrates that the alternative is the least environmentally damaging practicable alternative,<sup>8</sup> which can only be done by examining a full range of reasonable alternatives.

The Conservation Organizations urge the Corps to abandon its misguided efforts to build the destructive and dangerous Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate flood risk reduction benefits to affected communities in the Yazoo Backwater Area while restoring this ecologically critical region—including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

---

<sup>4</sup> 2008 Clean Water Act Final Determination at i.

<sup>5</sup> 40 C.F.R. § 1502.14.

<sup>6</sup> 33 U.S.C. 701b-11, 33 USC 2230; 33 USC 2289(a)(2).

<sup>7</sup> 42 USC 1962–3.

<sup>8</sup> 40 CFR 230.10(a). While the Corps does not technically issue itself a Clean Water Act 404 permit, it must satisfy the requirements of the 404(b)(1) Guidelines.



## Detailed Comments

To comply with the National Environmental Policy Act (NEPA), the Clean Water Act, the Endangered Species Act, the National Water Resources Planning Policy, the civil works mitigation requirements, key planning provisions established by a number of Water Resources Development Acts, and the nation's other vital environmental laws, the Conservation Organizations call on the Corps to follow the recommendations set forth in these recommendations when preparing the SEIS.

### A. The "Proposed Action" Should Be Abandoned Because it is Prohibited by the 2008 Clean Water Act 404(c) Final Determination and May Not Be Constructed

The Notice of Intent makes clear that the sole purpose of the supplemental environmental impact statement (SEIS) is to attempt to justify construction of the environmentally devastating Yazoo Backwater Pumps project—a project prohibited by the 2008 Clean Water Act Final Determination.

The 2008 Clean Water Act Final Determination was based on an extensive and detailed review and had overwhelming public support.<sup>9</sup> The Final Determination concludes:

This Final Determination under section 404(c) of the CWA addresses unacceptable adverse effects on fishery areas and wildlife associated with construction and operation of the proposed Yazoo Backwater Area Pumps Project. The section 404(c) regulations define an unacceptable adverse effect as an impact on an aquatic ecosystem that is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas (40 CFR 231.2(e)). Section 231.2(e) of the section 404(c) regulations states that the evaluation of the unacceptability of such impacts should consider relevant portions of the Section 404(b)(1) Guidelines. The relevant portions of the Section 404(b)(1) Guidelines in this case are their prohibition of any discharge that 1) would cause or contribute to significant degradation of the Nation's waters (40 CFR 230.10(c)) and 2) fails to adequately minimize and compensate for wetland and other aquatic resource losses (40 CFR 230.10(d)).

Based upon an independent evaluation by EPA Headquarters of the Recommended Determination and the administrative record submitted by the Regional Administrator and in full consideration of materials submitted by the project sponsor, the Corps and the Assistant Secretary of the Army for Civil Works, I have determined that the aquatic environment, which would be adversely impacted by the proposed project, contains significant fisheries and wildlife resources. According to the Corps, the Yazoo Backwater Area contains between 150,000 to 229,000 acres of wetlands, as well as an extensive network of streams, creeks, and other aquatic resources. Extensive information collected on the Yazoo Backwater Area demonstrates that it includes some of the richest wetland and aquatic resources in the Nation. These include a highly productive floodplain fishery, substantial tracts of highly productive bottomland hardwood

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<sup>9</sup> The 2008 Clean Water Act Final Determination garnered overwhelming support, including from: the Department of the Interior; the U.S. Fish and Wildlife Service; more than 120 conservation organizations; 540 independent scientists; the Society of Wetland Scientists; the Association of State Wetland Managers; a former EPA Administrator; four former EPA Assistant Administrators for Water; a former Deputy Assistant Secretary of the Army for Civil Works; and 99.9% of the 48,000 comments submitted during the veto process, including 90% of comments submitted by Mississippi residents.



forests that once dominated the LMRAV, and important migratory bird foraging grounds. These wetlands provide important habitat for an extensive variety of wetland dependent animal and plant species, including the federally protected Louisiana black bear and pondberry plant. In addition to serving as critical fish and wildlife habitat, project area wetlands also provide a suite of other important ecological functions. These wetlands protect and improve water quality by removing and retaining pollutants, temporarily store surface waters, maintain stream flows, and support aquatic food webs by processing and exporting significant amounts of organic carbon.

The administrative record developed in this case fully supports the conclusion that the construction and operation of the proposed project (i.e., Plan 5 of the FSEIS) and the two alternative proposals offered by the Corps in February 2008 (i.e., Plan 6 and Modified Plan 6), would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time project area wetlands flood. These large-scale hydrologic alterations would significantly degrade the critical ecological functions provided by at least 28,400 to 67,000 acres of wetlands in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources. Although not proposed to go forward, FSEIS Plans 3, 4, and 7, would also result in a dramatic alteration of the hydrologic regime in the Yazoo Backwater Area, significantly degrading the critical ecological functions provided by between approximately 28,400 and 118,400 acres of wetlands (see FSEIS Main Report, Table 17, page 1-20). In addition, EPA believes that the Corps has not adequately evaluated the degradation to critical ecological functions that the proposed project would have on 24,000 acres of wetlands outside the FSEIS wetland assessment area. EPA does not believe that impacts of this magnitude are consistent with the CWA. Further, these impacts must be viewed in the context of the significant cumulative losses across the LMRAV, which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.

EPA also finds that the Corps has not demonstrated that potential impacts of the Yazoo Backwater Area Project can be adequately mitigated to reduce the impacts to an acceptable level. Additionally, EPA finds that the environmental benefits suggested by the FSEIS to accrue from the project's nonstructural component have not been substantiated.

EPA also notes that the FWS, in its comments on the Proposed and Recommended Determinations, concurred with EPA Region IV's conclusion that the proposed project would result in extensive and unacceptable adverse effects on wildlife and fisheries. FWS also highlighted its concerns that the proposed project would significantly degrade the wildlife habitat provided by its four National Wildlife Refuges located within the Yazoo Backwater Area – reducing the capability of these refuges to achieve the purpose and intent for which they were congressionally established.

After evaluation of the Recommended Determination and the full administrative record, including public comments and the written documents and information provided by the project sponsor, the Corps and the Assistant Secretary of the Army for Civil Works subsequent to the Recommended Determination, I have determined that the discharge of dredged or fill material in connection with the construction of FSEIS Plans 3 through 7, and Modified Plan 6 would have an unacceptable adverse effect on fishery areas and wildlife. Based on these findings, the Final Determination prohibits, pursuant to section 404(c) of the CWA, the specification of the subject wetlands and other waters of the United States as described in the FSEIS as a disposal site for



the discharge of dredged or fill material for the purpose of construction of FSEIS Plans 3 through 7, and Modified Plan 6.

The adverse effects associated with the prohibited projects are the result of a combination of operational factors including the capacity of the pumping station and its associated pump-on elevations. While this Final Determination prohibits the construction of FSEIS Plans 3 through 7, and Modified Plan 6, the data supporting this Final Determination indicates that derivatives of the prohibited projects that involve only small modifications to the operational features or location of these proposals would also likely result in unacceptable adverse effects and would generate a similar level of concern and review by EPA.<sup>10</sup>

According to the Notice of Intent:

The 2007 FSEIS evaluated a broad array of alternatives, including the No-Action alternative, nonstructural alternatives, structural alternatives, and combinations of structural and nonstructural alternatives. Reformulation will not be included in the Supplemental Environmental Impact Statement. The Supplemental Environmental Impact Statement will focus primarily on updating the 2007 FSEIS where necessary and incorporating the new, previously unavailable, scientific data to analyze the Proposed Action and compare it to the 2007 FSEIS.<sup>11</sup>

Thus, the Notice of Intent plainly states that the SEIS will examine just a single alternative, which is referred to as the “Proposed Action.” The Proposed Action consists of the **same** 14,000 cubic foot per second pumping plant, running under the **same** operating plan, pumping water out of the **same** project area, and for the **same** purpose as the 2007 Final SEIS recommended plan—the exact project that was vetoed under Clean Water Act § 404(c) in 2008.<sup>12</sup> The Proposed Action also includes the **same** 55,000-acre voluntary reforestation component that was included in the vetoed plan. The only difference between the Proposed Action and the 2008 vetoed project is that the Proposed Action moves the physical location of the Yazoo Pumps by a few miles to the Deer Creek Site. **In short, the Proposed Action is the same project that was vetoed in 2008 and may not be constructed.**<sup>13</sup> The SEIS should abandon consideration of the Proposed Action and any variation of the Yazoo Pumps.

The Conservation Organizations note that the potential “installation of well fields adjacent to the Mississippi River levee upstream of the backwater area” does not alter the fact that the Proposed Action is the same project that was vetoed in 2008, for at least the following reasons. First, the proposed well fields are fundamentally unrelated to the Yazoo Pumps. Based on the information provided in the Notice of Intent, these relief wells would be located in the far northwestern portion of the Yazoo Backwater Area and would be used to attempt to increase river flows during dry conditions. The Yazoo Pumps will be located on the southeastern edge of the Yazoo Backwater Area and, of course, are

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<sup>10</sup> 2008 Clean Water Act Final Determination at 72-73 (internal footnote omitted).

<sup>11</sup> 85 Fed. Reg. 21218, 21220 (April 16, 2020).

<sup>12</sup> The plan recommended by the 2007 Final EIS is typically referred to as Plan 5, which was explicitly vetoed in the 2008 Clean Water Act Final Determination.

<sup>13</sup> Based on a partial analysis of wetland impacts provided by the Corps in response to a Freedom of Information Act request, it is also clear that the impacts of the Proposed Action will fall within the 28,400 to more than 67,000-acre range of vetoed wetland impacts. This partial Corps wetland analysis is discussed at length in Section D.2 of these comments.



designed to pump water out of the Yazoo Backwater Area during high water events. Second, the well fields referenced in the Notice of Intent could quickly and easily be constructed as a stand-alone project. There are already many similar types of well fields in the Yazoo Backwater Area (these “relief wells” are typically designed to prevent natural under-seepage from affecting the integrity of a levee). Third, the well fields are being proposed as an “environmental mitigation” measure for the Proposed Action. If the Proposed Action aggravates the already significant low flow conditions in the Yazoo Backwater Area, those impacts must be mitigated as a matter of law and such mitigation would not somehow transform the Proposed Action into a new project. The Conservation Organizations also note that the proposed well fields could themselves create adverse environmental impacts, and may not result in any meaningful augmentation of low flows.

## **B. The SEIS Must Establish a Proper Project Purpose**

It is critical that the SEIS utilize a substantively and legally appropriate project purpose, which determines the universe of alternatives that must be evaluated.<sup>14</sup> It is well-settled that all reasonable alternatives that accomplish the project purpose must be examined in an environmental impact statement (EIS), while alternatives that are not reasonably related to the project purpose do not have to be examined.<sup>15</sup>

An overly narrow project purpose can defeat the fundamental purpose of an EIS by eliminating consideration of highly reasonable, less environmentally damaging alternatives:

One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). . . . If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. 42 U.S.C. § 4332(2)(E).<sup>16</sup>

A court “will reject an ‘unreasonably narrow’ definition of objectives that compels the selection of a particular alternative.”<sup>17</sup> Agencies are also prohibited from so narrowly defining a project purpose that

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<sup>14</sup> *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) (the project purpose and need “delimit[s] the universe of the action’s reasonable alternatives.”) *See also* *Wyoming v. U.S. Dep’t of Agric.*, 661 F.3d 1209, 1244 (10th Cir. 2011) (“how the agency defines the purpose of the proposed action sets the contours for its exploration of available alternatives.”).

<sup>15</sup> *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-16 (9th Cir. 1987).

<sup>16</sup> *Simmons v. United States Army Corps of Eng’rs*, 120 F.3d 664, 666 (7th Cir. 1997); *City of Carmel-by-the-Sea v. United States Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (“an agency cannot define its objectives in unreasonably narrow terms”); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195-96 (D.C. Cir. 1991), cert. denied, 502 U.S. 994 (1991) (“an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action”); *City of New York v. United States Dep’t of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983), cert. denied, 456 U.S. 1005 (1984) (“an agency will not be permitted to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered”).

<sup>17</sup> *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 73 (D.C. 2011).



it “forecloses a reasonable consideration of alternatives”<sup>18</sup> or makes the final EIS “a foreordained formality.”<sup>19</sup>

The Notice of Intent clearly establishes an overly narrow project purpose. According to the Notice of Intent, the SEIS: “will analyze a new project proposal to build the pump project (the Proposed Action) in light of the new data” and the “Proposed Action is a new project proposal to complete the Yazoo Area Pump Project feature to alleviate the flood damage in the Yazoo Backwater Area.”<sup>20</sup>

This project purpose is overly narrow because it forecloses a reasonable consideration of alternatives that do not focus solely on building the Proposed Action, and makes the final SEIS a foreordained formality.

The SEIS should adopt a fundamentally different project purpose that, as required by law, considers “the views of Congress, expressed, to the extent that an agency can determine them, in the agency’s statutory authorization to act, **as well as in other Congressional directives.**”<sup>21</sup> Notably, Congress has established a multitude of directives that explicitly require and/or promote: (1) the protection and restoration of the nation’s waters and fish and wildlife resources; and (2) the use of natural infrastructure and nonstructural measures as a tool for achieving those goals.<sup>22</sup> For example:

- (1) In 2018, Congress required the Corps to “consider the use of both traditional and natural infrastructure alternatives, alone or in conjunction with each other, if those alternatives are practicable” in flood and storm damage risk reduction studies. America’s Water Infrastructure Act of 2018 § 1149(c). Natural infrastructure alternatives include, but are by no means limited to, actions to protect and restore floodplain wetlands.
- (2) In 2016, Congress directed the Corps to “consider, as appropriate” natural and nature-based measures in flood and storm risk reduction and ecosystem restoration studies. 33 USC 2289a.

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<sup>18</sup> *Fuel Safe Washington v. Fed. Energy Regulatory Comm’n*, 389 F.3d 1313, 1324 (10<sup>th</sup> Cir. 2004) (quoting *Davis v. Mineta*, 302 F.3d 1104, 1119 (10<sup>th</sup> Cir. 2002); *Citizens’ Comm. To Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1030 (10<sup>th</sup> Cir. 2002); *Simmons v. United States Army Corps of Eng’rs*, 120 F.3d 664, 666 (7<sup>th</sup> Cir. 1997); *City of New York v. United States Dep’t of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983), cert. denied, 456 U.S. 1005 (1984) ((holding that “an agency may not narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991), cert. denied 502 U.S. 994 (1991).

<sup>19</sup> *City of Bridgeton v. FAA*, 212 F.3d 448, 458 (8<sup>th</sup> Cir. 2000) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991), cert. denied 502 U.S. 994 (1991); citing *Simmons v. U.S. Army Corps of Eng’rs*, 120 F.3d 664, 666 (7<sup>th</sup> Cir. 1997)).

<sup>20</sup> U.S. Army Corps of Engineers, Notice of Intent to Prepare Supplemental Environmental Impact Statement for the Yazoo Area Pump Project, 85 Fed. Reg. 21218, 21219 (April 16, 2020). By contrast, the 2007 SEIS utilized the following project purpose: “The primary purpose of the authorized Yazoo Backwater Project is to reduce flood damages to the study area.” U.S. Army Corps of Engineers, Final Supplement No. 1 To The 1982 Yazoo Area Pump Project Final Environmental Impact Statement (2007) at SEIS-15, paragraph 40. However, since the 2007 SEIS also determined that more than 80% of the alleged benefits from the Yazoo Pumps would come from increased agricultural production on drained lands, it is clear that the 2007 SEIS recommend an agricultural drainage project.

<sup>21</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (emphasis added).

<sup>22</sup> Post-project authorization directives, which include those outlined above, should be incorporated into the project purpose. According to Supplement I, “Project authority is the Flood Control Act of 1928, as amended, including, but not limited to, the Flood Control Acts of 1936, 1938, 1941, 1946, 1950, 1954, 1962, 1965, and 1968 and the Water Resources Development Act of 1986.” Supplement I, Project Report at 1.



- (3) In 2007, Congress directed that all water resources projects protect and restore the environment, including by protecting and restoring the functions of natural systems. 42 USC 1962–3.
- (4) In 1974, Congress directed the Corps to consider nonstructural alternatives when planning flood damage reduction projects. 33 USC 701b-11. Nonstructural alternatives avoid damage to natural systems, including floodplain wetlands.
- (5) In 1973, Congress passed the Endangered Species Act to conserve endangered and threatened species and “the ecosystems upon which endangered species and threatened species depend.” The Endangered Species Act also declares a Congressional policy “that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.” Endangered Species Act, 16 USC 1531.
- (6) In 1972, Congress passed the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Clean Water Act § 101, 33 USC § 1251. The Clean Water Act also directed the development of the 404(b)(1) Guidelines which establish clear policies and procedures for protecting wetlands and other special aquatic sites.
- (7) In 1970, Congress directed the “Federal Government to use all practicable means” to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.” National Environmental Policy Act, 42 U.S.C. § 4331(b).
- (8) In 1958 Congress directed that “wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development” and that water resources development is to prevent loss and damage to fish and wildlife and improve the health of fish and wildlife resources. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661, 662.
- (9) The 1941 Congressional authorization for the Yazoo Pumps explicitly designates lands “located below 90 feet, NGVD, in elevation to serve as a sump area for surface water storage”<sup>23</sup> and in 1959, the Corps determined that the authorized level of protection had been met.<sup>24</sup>

To account for these many directives focused on protecting and restoring natural systems, including floodplain wetlands, and to ensure that the alternatives analysis does not inappropriately limit the analysis of alternatives, our organizations urge adoption of the following statement of project purpose:

The purpose of the proposed action is to reduce and avoid flood damages in the study area while protecting and restoring the ecological health of the study area and its wetlands.

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<sup>23</sup> 2008 Clean Water Act Final Determination at 7-9.

<sup>24</sup> Id. (quoting Vicksburg District Corps, MR&T Comprehensive Review Report, Annex L, Yazoo Backwater Project Mississippi at 20 (November 1959)).



### C. The SEIS Must Rigorously Explore and Objectively Evaluate All Reasonable Alternatives and Select an Alternative that Protects and Restores the Yazoo Backwater Area

The analysis of alternatives is the heart of the environmental review process, and the SEIS must rigorously and objectively evaluate all reasonable alternatives. The Conservation Organizations call on the Corps to rigorously and objectively evaluate the proposed Resilience Alternative discussed below and provided at Attachment A to these comments. The Conservation Organizations incorporate the detailed information provided in this Attachment A as thought as though fully set forth herein.

#### 1. The SEIS Must Rigorously and Objectively Evaluate All Reasonable Alternatives

The SEIS must “[r]igorously explore and objectively evaluate all reasonable alternatives.”<sup>25</sup> This fundamental NEPA mandate clearly applies to supplemental environmental impact statements,<sup>26</sup> which means that “the existence of reasonable but unexamined alternatives” will render the SEIS “inadequate.”<sup>27</sup> An SEIS that examines just one alternative—as the Notice of Intent explicitly states will be done in this SEIS—would unquestionably violate NEPA.<sup>28</sup>

The Water Resources Development Acts require the Corps to consider non-structural alternatives and practicable “natural infrastructure alternatives.”<sup>29</sup> The Water Resources Development Act of 2007 directs that all water resources projects are to reflect national priorities by “protecting and restoring the functions of natural systems.”<sup>30</sup>

The Clean Water Act 404(b)(1) Guidelines prohibit the Corps from proceeding with a civil works project unless the Corps demonstrates that the project is the least environmentally damaging practicable alternative,<sup>31</sup> which can only be done by examining a full range of reasonable alternatives. “An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”<sup>32</sup>

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<sup>25</sup> 40 C.F.R. § 1502.14.

<sup>26</sup> *Holy Cross Neighborhood Ass'n v. U.S. Army Corps of Engineers*, No. CIV.A. 03-370, 2011 WL 4015694, at \*7 (E.D. La. Sept. 9, 2011) (holding that Army Corps violated NEPA by failing to “re-evaluate” alternatives in a SEIS in light of significant new information); *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813–14 (9th Cir.2005) (holding that “where changed circumstances affect the factors relevant to the development and evaluation of alternatives,” an agency’s SEIS “must account for such change in the alternatives it considers.”) (citation omitted); *Sierra Forest Legacy v. Ray*, 577 F.3d 1015, 1021-22 (9th Cir. 2009) (holding that additional alternatives analysis was required in an SEIS due to “altered ... modeling techniques” and “substantively new objectives” since preparation of the original EIS); 40 CFR §1502.9 (c) (applying same standards to preparing an EIS and an SEIS). See *High Country Conservation Advocates v. United States Forest Serv.*, 951 F.3d 1217, 1227 (10th Cir. 2020) (holding that agency arbitrarily eliminated an alternative from detailed study in a SEIS).

<sup>27</sup> *Ctr. for Biological Diversity v. United States Dep't of the Interior*, 623 F.3d 633, 642 (9th Cir. 2010); *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 868 (9th Cir. 2004); *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998); *Oregon Natural Desert Ass'n v. Bureau of Land Management*, 531 F.3d 1114, 1121 (9th Cir. 2008).

<sup>28</sup> 85 Fed. Reg. 21218, 21220 (April 16, 2020).

<sup>29</sup> 33 U.S.C. 701b-11, 33 USC 2230; 33 USC 2289(a)(2).

<sup>30</sup> 42 USC 1962–3.

<sup>31</sup> 40 CFR 230.10(a). While the Corps does not technically issue itself a Clean Water Act 404 permit, it must satisfy the requirements of the 404(b)(1) Guidelines.

<sup>32</sup> 40 C.F.R. § 230.10(a).



The Council on Environmental Quality has made clear that “[r]easonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”<sup>33</sup> Critically, the SEIS must also include “reasonable alternatives not within the jurisdiction of the lead agency.”<sup>34</sup> Congress has long recognized the importance of the Corps carefully assessing wetland restoration, nonstructural measures and reasonable alternatives that are not within the agency’s jurisdiction when evaluating alternatives. For example, the Conference Report for the Water Resources Development Act of 1996 states:

The conferees have included several provisions in section 202 which modify the flood control program of the Corps of Engineers, reflecting an evolution in national flood control policy. The conferees have deleted the provision in the House bill to allow additional review of the proposal without prejudice to its substance. The conferees expect the Corps to continue to consider nonstructural alternatives as required by existing law, and encourage the Corps to improve its efforts at considering nonstructural alternatives in its project study and formulation. Such consideration should include watershed management, wetlands restoration, elevation, and relocation. The Corps is also encouraged to explore alternatives which may be implemented by others, beyond the authority of the Corps. Examples of such alternatives include changes in zoning or development patterns by local officials. Because the Corps has no authority to implement such recommendations, such options are generally not explored or displayed in Corps study documents. However, such alternatives could, in some cases, result in a more effective flood protection program at reduced cost to both Federal and non-Federal interests.

Such alternatives are consistent with current approaches to flood control and recent congressional actions related to reducing Federal expenditures for flooding. For example, Congress enacted the Hazard Mitigation and Flood Damage Reduction Act of 1993, in direct response to the disastrous flooding in the Midwest in 1993. This law allows for increased use of relocation in response to flooding. It would be prudent for the Corps to also increase its review of nonstructural alternatives prior to flooding.<sup>35</sup>

In developing and selecting alternatives, the SEIS must also comply with the full suite of federal laws and policies designed to protect the environment. These include, the Endangered Species Act, the Clean Water Act, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, and the mitigation requirements applicable to Corps civil works projects that were established by § 2036(a) of the Water Resources Development Act of 2007. These mitigation requirements must be satisfied, among other times, whenever the Corps will be recommending a project alternative in an EIS.<sup>36</sup> The alternative ultimately recommend by the SEIS must also obtain a Clean Water Act water quality certification from the State of Mississippi.

In short, the SEIS must evaluate a full range of reasonable alternatives—including nonstructural, natural, and nature-based solutions—that would protect and restore the natural functions of the rivers, streams, and wetlands in the Yazoo Backwater Area. The SEIS must ultimately select an alternative that achieves these objectives while causing the least possible amount of harm to the environment.

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<sup>33</sup> Forty Most asked Questions Concerning CEQ’s NEPA Regulations, 46 Fed. Reg. 18,026 (March 23, 1981).

<sup>34</sup> 40 CFR §1502.14(c).

<sup>35</sup> H.R. Rep. No. 104-843, at 146 (1996) (Water Resources Development Act of 1996 Conference Report) (discussing the same section that waived the non-federal cost share for the Yazoo Pumps if they are located at Steele Bayou).

<sup>36</sup> 33 U.S.C. § 2283(d).



It is clear from the Notice of Intent, however, that the SEIS will not comply with these critical requirements. Instead, the SEIS will look at just one alternative—an alternative that will cause such significant and unacceptable harm that it was vetoed under the Clean Water Act in 2008.

According to the Notice of Intent:

The 2007 FSEIS evaluated a broad array of alternatives, including the No-Action alternative, nonstructural alternatives, structural alternatives, and combinations of structural and nonstructural alternatives. Reformulation will not be included in the Supplemental Environmental Impact Statement. The Supplemental Environmental Impact Statement will focus primarily on updating the 2007 FSEIS where necessary and incorporating the new, previously unavailable, scientific data to analyze the Proposed Action and compare it to the 2007 FSEIS.<sup>37</sup>

If the SEIS in fact follows the highly restricted approach announced in the Notice of Intent, it will be in direct violation of NEPA, the Clean Water Act, and many other bedrock environmental laws.

## **2. The Recommended Resilience Alternative Will Quickly Provide Sustainable Benefits to the Yazoo Backwater Area While Restoring the Environment**

The Conservation Organizations call on the Corps to fully examine the Resilience Alternative included in Attachment A to these comments, along with other natural, nature-based, and non-structural alternatives. The Resilience Alternative will avoid flood risks and reduce flood damages to impacted communities while protecting and restoring—instead of harming—this ecologically rich area. The Resilience Alternative unquestionably complies with the Clean Water Act 404(b)(1) Guidelines, the Endangered Species Act, and all other applicable environmental laws.

The Resilience Alternative utilizes sustainable solutions that are being employed by communities across the country to reduce flood risks, including purchasing wetland reserve and floodplain easements, voluntary buyouts and relocations, and flood-proofing infrastructure (including elevating homes, buildings and roads). These solutions can be carried out under existing federal programs that are currently funded and available for use in the Yazoo Backwater Area, including: U.S. Department of Agriculture easement programs; Federal Emergency Management Agency pre-disaster mitigation programs (which are being consolidated under the new Building Resilient Infrastructure and Communities “BRIC” program); and Federal Emergency Management Agency post-disaster recovery programs.<sup>38</sup>

In evaluating the Resilience Alternative and developing and evaluating other reasonable alternatives, the SEIS must ensure: (i) a full understanding of the conditions on-the-ground, including the strong interest in enrolling lands in conservation easements, established conservation priorities, and the significant farm subsidy payments that already flow to farms in the Yazoo Backwater Area; (ii) a full and accurate

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<sup>37</sup> 85 Fed. Reg. 21218, 21220 (April 16, 2020).

<sup>38</sup> Post-disaster recovery funds and programs are available for at least one year after a Presidential Emergency Declaration, and eligibility can be extended for an additional 180 days. These funds and programs may currently be available to the Yazoo Backwater Area pursuant to Federal Disaster Declaration 4429, which was most recently amended on September 20, 2019 (available at <https://www.fema.gov/disaster/4429/notices>).



assessment of environmental impacts (including the long-term impacts of climate change) and of economic costs and benefits; and (iii) full compliance with Federal environmental laws and planning requirements, all as highlighted throughout these comments.

The following factors provide clear and compelling evidence of the appropriateness of selecting, and the practicability of, the Resilience Alternative. These factors must be fully evaluated in the SEIS:

- (1) There has been—and continues to be—a strong interest in enrolling lands in the Wetland Reserve Easement program in the Yazoo Backwater Area, as demonstrated by NRCS data (see Figure 1, below).

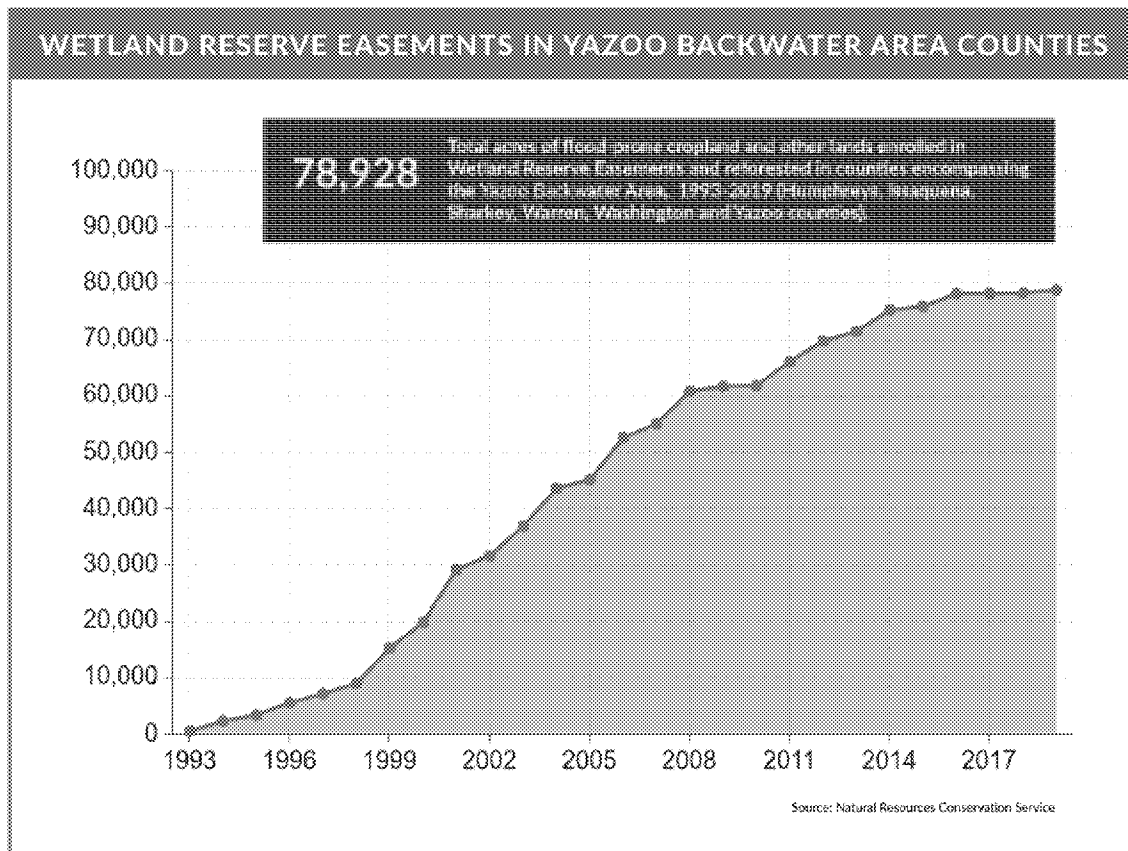


Figure 1, Wetland Reserve Easements in Yazoo Backwater Counties, 1993-2019 (Source: NRCS)

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The high demand for the Wetland Reserve Easement program can be seen throughout the Lower Mississippi Valley states, as demonstrated by NRCS data (see Figure 2, below). More than 1,000 separate Wetland Reserve Easement applications were pending in Arkansas, Louisiana, Kentucky, Mississippi, Missouri and Tennessee in FY2019. But just 98 were funded that year, enrolling 18,534 acres at a cost of \$71 million. This represents just 10% of lands that owners currently want to enroll and restore in the Lower Mississippi Valley states. Unfunded applications roll over from year to year, and efforts are underway to encourage Congress to increase funding to address the backlog in this program.

Wetland Reserve Easements in the Lower Mississippi Valley States						
Pending Applications and Funded Easements for FY 2019						
State	Applications	Value	Acres	Easements Funded	Value	Acres Enrolled
Arkansas	116	\$91,548,905	28,639	20	\$12,244,691	4,339
Kentucky	19	\$22,691,157	4,388	13	\$7,700,000	1,354
Louisiana	339	\$194,540,500	62,333	31	\$16,911,697	5,028
Mississippi	309	\$175,134,388	60,172	18	\$16,631,186	3,801
Missouri	182	\$69,963,059	15,085	9	\$12,833,949	2,364
Tennessee	47	\$17,338,134	5,521	7	\$5,174,571	1,648
<b>Total</b>	<b>1,012</b>	<b>\$571,216,143</b>	<b>176,138</b>	<b>98</b>	<b>\$71,496,094</b>	<b>18,534</b>

Figure 2, WRE Easement Requests Lower Mississippi Valley States (Source: NRCS)

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- (2) There is substantial interest in—and a significant need for—restoring forested and other wetlands in the project area, as evidenced by the 2020 Lower Mississippi Valley Joint Venture Conservation Priorities in the Yazoo Backwater Area (see Figure 3, below).<sup>39</sup> In the Fish and Wildlife Coordination Act Report prepared for the 2007 SEIS, the U.S. Fish and Wildlife Service stated that the Yazoo Backwater Area is the area with the “greatest potential” for meeting breeding bird habitat restoration and protection needs within the Mississippi Alluvial Valley.<sup>40</sup>

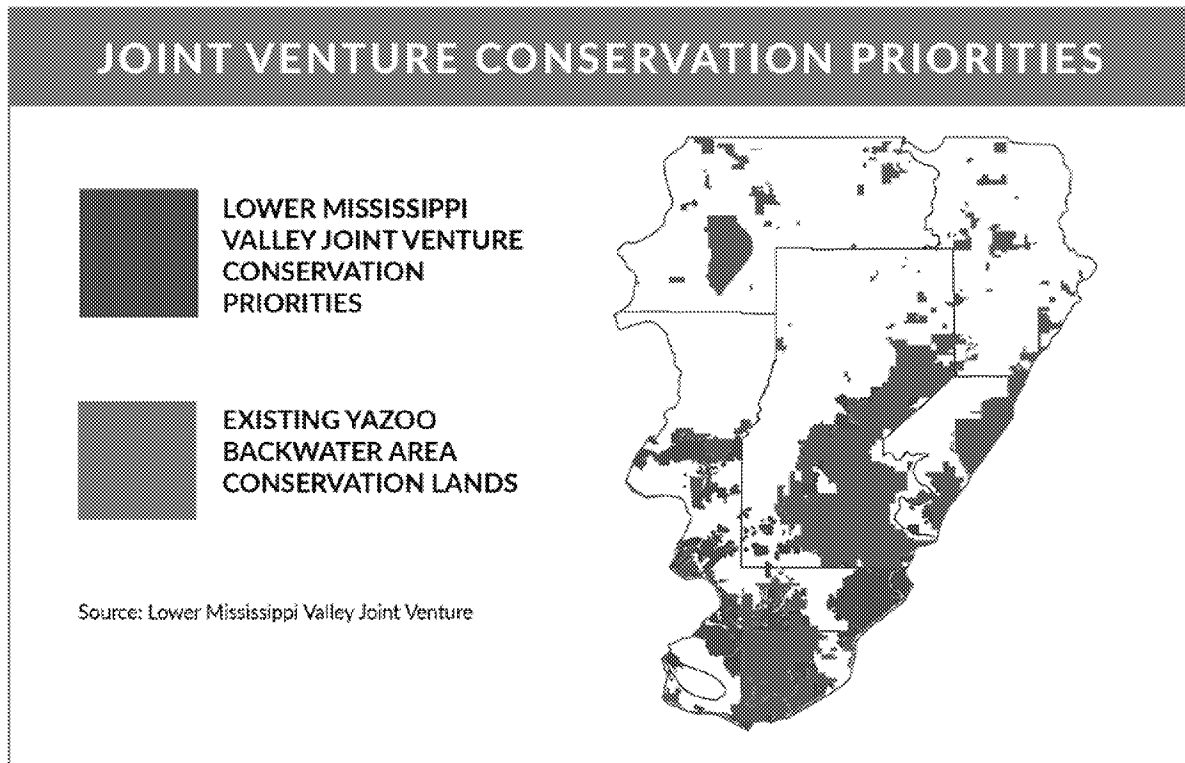


Figure 3, Lower Mississippi Valley Joint Venture 2020 Yazoo Backwater Area Conservation Priorities

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<sup>39</sup> Elliott, A.B.; Mini, A.E.; McKnight, S.K.; Twedt, D.J. Conservation–Protection of Forests for Wildlife in the Mississippi Alluvial Valley. *Forests* 2020, 11, 75 (available at <https://www.mdpi.com/1999-4907/11/1/75>). A copy of this study is provided at Attachment E to these comments. The GIS data associated with this study can be accessed at <https://www.sciencebase.gov/catalog/item/5dd30670e4b069579762839c>.

<sup>40</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 7.



- (3) Reforestation of the wettest lands in the Yazoo Backwater Area is a conservation priority, and there are no limitations (*i.e.*, there are no county caps) on enrolling these lands in the Wetland Reserve Easement Program. Most of the 250,000 acres of conservation lands in the Yazoo Backwater Area have been established on the wettest soils. These wet soils, commonly known as 4W+ lands, are classified by USDA as “severely limited” for farming and are exempt from county caps on Wetland Reserve Easements. There are at least 46,000 acres of 4W+ lands in the Yazoo Backwater Area that are not in conservation, many of which are adjacent to existing conservation lands (see Figure 4, below). Reforestation of remaining unprotected 4W+ lands is a conservation priority. Investments to increase Wetland Reserve Easement Program enrollments would greatly improve the financial security of farmers who plant crops on marginal lands.

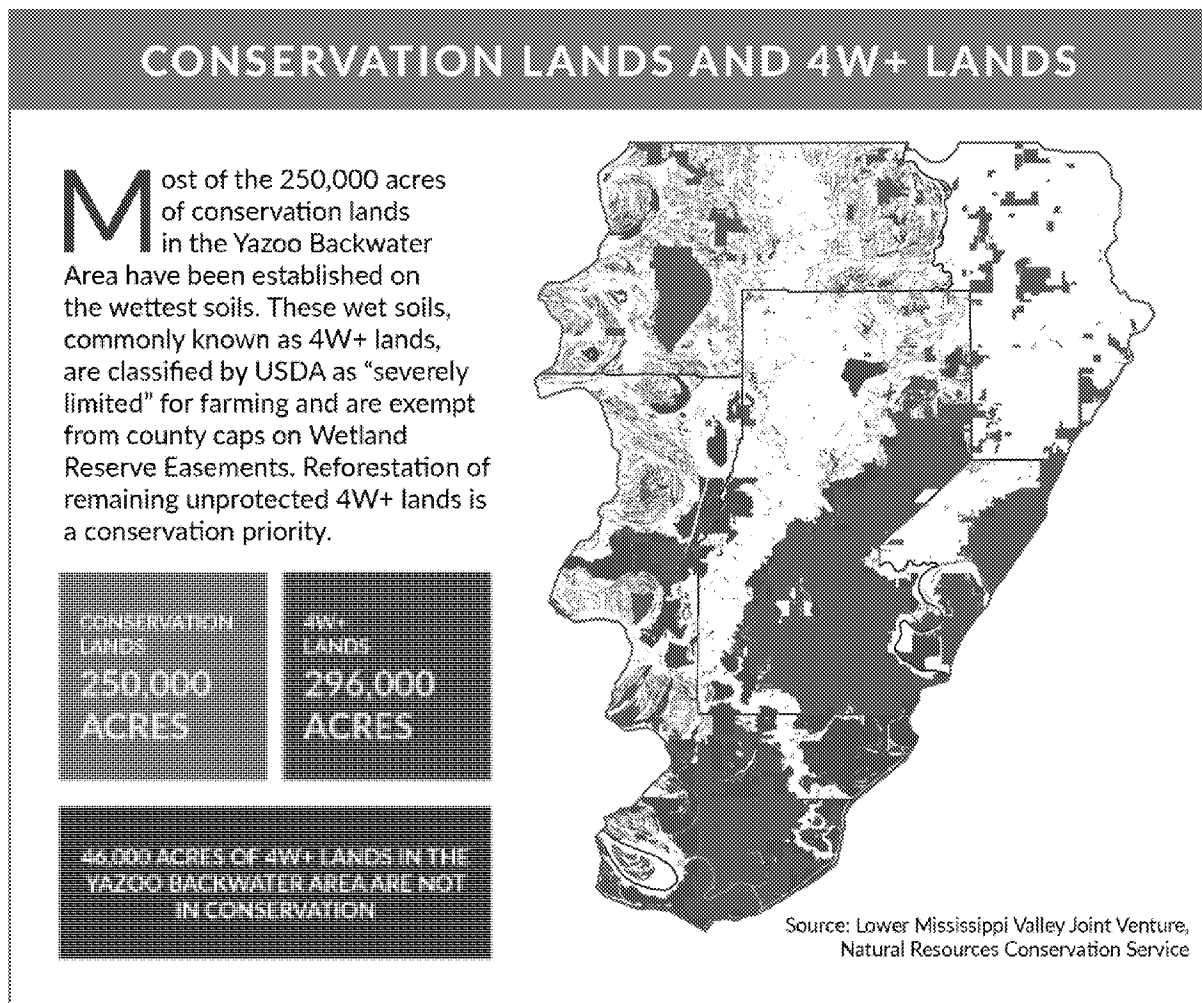


Figure 4, Conservation Lands and 4W+ Lands in the Yazoo Backwater Area



(4) Operation of the Yazoo Pumps would unquestionably damage both existing conservation lands, and lands that are a priority for future conservation efforts, including:

- The Yazoo National Wildlife Refuge Complex, which includes Panther Swamp National Wildlife Refuge, Yazoo National Wildlife Refuge, Holt Collier National Wildlife Refuge, and Theodore Roosevelt National Wildlife Refuge;
- Delta National Forest, which is the only bottomland hardwood forest in the National Forest System;
- Twin Oaks Mitigation Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Mahannah Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Lake George Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Phil Bryant Wildlife Management Area; and
- The extensive acreage enrolled in the Wetland Reserve Easement and Conservation Reserve Programs.

Had the Yazoo Pumps been operating in 2019, vast acres of wetlands would have been drained—between 60,000 and 70,000 acres—even as 65% of flooded lands would have remained underwater (including 110,000 acres of cropland). The largest single tract of land that would have been drained is the 8,000-acre Lake George Wildlife Management Area, a Corps mitigation site for previously constructed water resources projects. See Figure 5, below.

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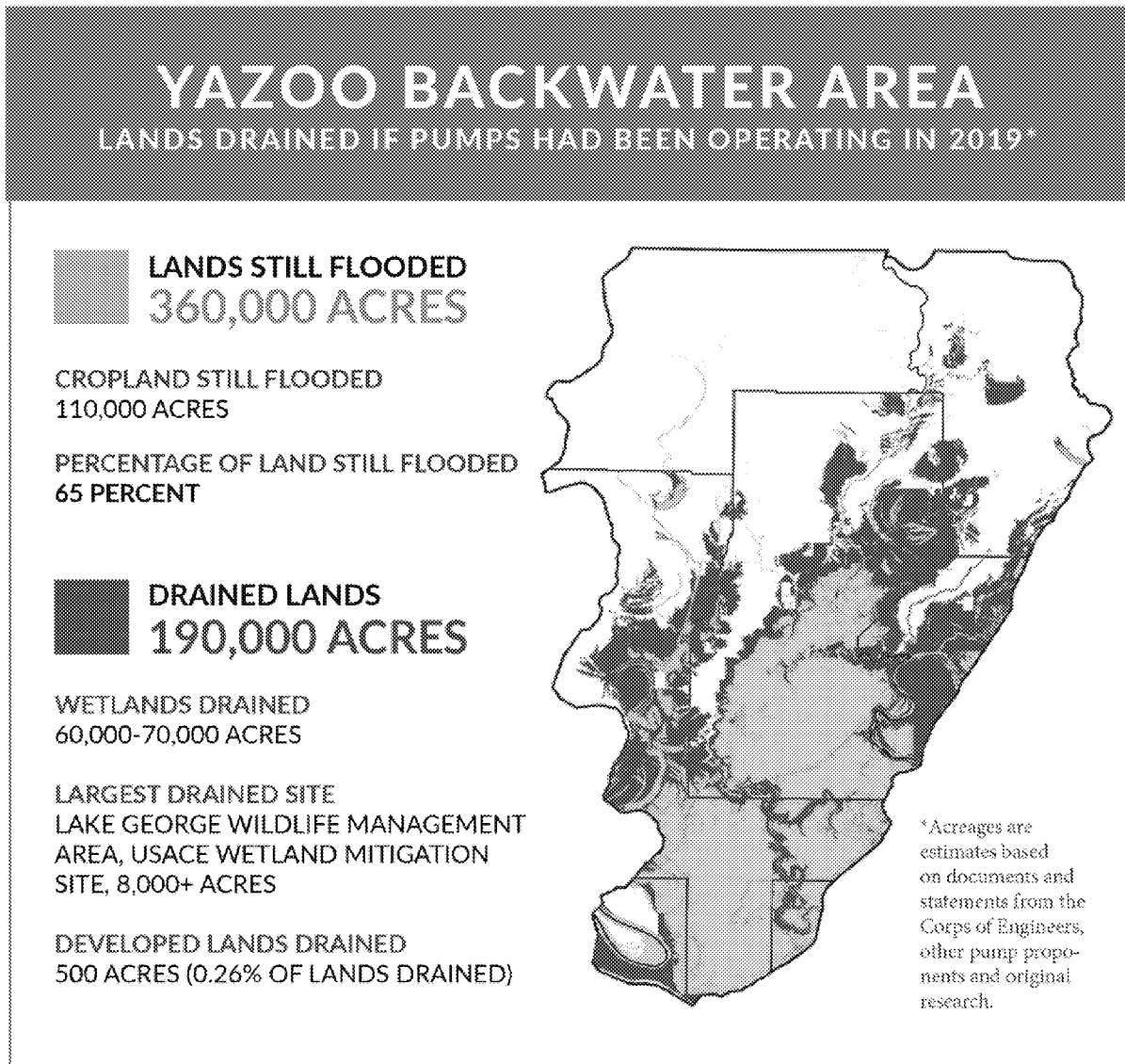


Figure 5, Yazoo Backwater Area, Lands Drained if Yazoo Pumps had been operating in 2019

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- (5) Many farms in the Yazoo Backwater Area already receive substantial farm subsidy payments, calling into question the so-called “need” for having taxpayers spend what will likely be more than \$440 million to further subsidize agricultural production in this region. The 2007 SEIS concluded that more than 80% of project benefits would come from agricultural intensification.

According to USDA data compiled through the Environmental Working Group Farm Subsidy Database, farms in the 16 zip codes that fall within the Yazoo Backwater Area received the following subsidies between 1995 and 2019 (see Figures 6 and 7, below):

- Recipients received a total of **\$1.05 billion** in farm subsidy payments;
- The top 5 recipients received a total of **\$20.5 million, \$17.4 million, \$15.5 million, \$14.2 million, and \$10.7 million**, respectively;
- The top 5 recipients in each zip code received a total of **\$430.7 million—an average of \$215,000 for each of 80 recipients every year for 25 years**;
- 272 recipients received **more than \$1 million each—an average of \$40,000 a year for each recipient every year for 25 years**.

While the purchase of conservation easements provides important financial assistance to farmers, it does so without facilitating agricultural intensification and restores ecological services that provide important ecological services to the entire region, and beyond. The purchase of conservation easements also creates important cost avoidance benefits (see Section F.5, below).

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# YAZOO BACKWATER AREA FARM SUBSIDIES\*

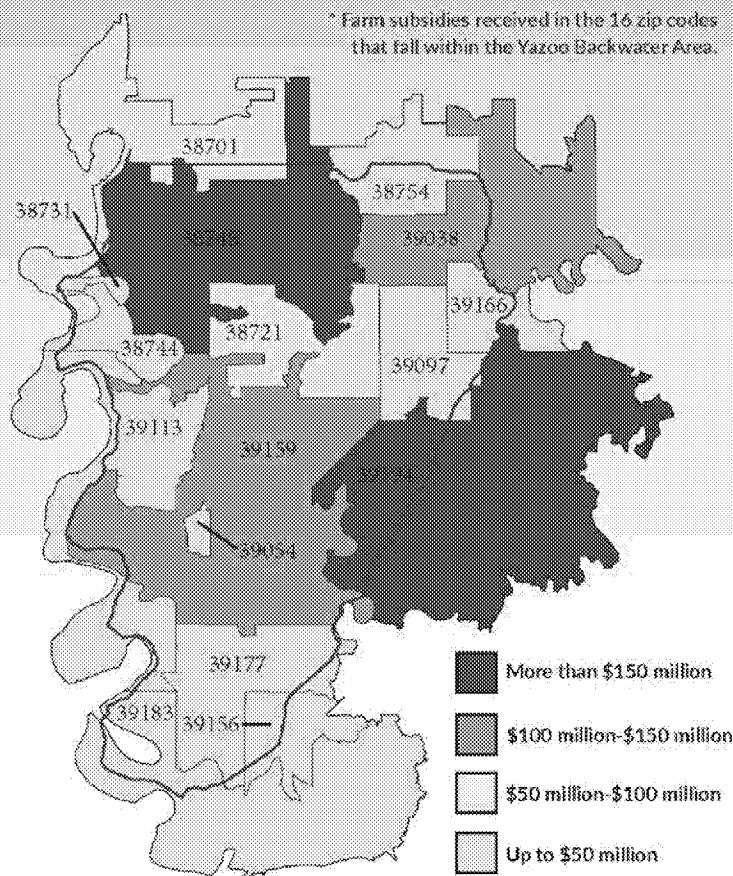
## TOTAL SUBSIDIES\*

**\$1.05  
BILLION**

Subsidy payments include all taxpayer-funded farm subsidies received from 1995 to 2019. Subsidies were compiled for the 16 zip codes that fall within the Yazoo Backwater Area from the Environmental Working Group Farm Subsidy Database, which compiles USDA data. Some of the zip codes extend beyond the boundary of the backwater area (outlined in blue).

ZIP CODE	SUBSIDIES
38754	\$26,945,846
38752	\$195,420,623
39159	\$148,391,998
39038	\$112,189,087
38721	\$77,456,356
38701	\$67,762,848
39097	\$49,603,235
38744	\$44,373,852
38754	\$26,945,846
39054	\$25,504,986
39183	\$25,462,913
38731	\$19,659,275
39177	\$18,153,356
39166	\$15,032,921
39156	\$12,270,589
39113	\$8,484,164
<b>TOTAL</b>	<b>\$1,053,173,966</b>

\* Farm subsidies received in the 16 zip codes that fall within the Yazoo Backwater Area.



Subsidies received include commodity payments, crop insurance, disaster payments and conservation payments. From 1995 to 2019, Mississippi farmers received a total of \$10.1 billion in farm subsidy payments, of which 90% were crop-related.



Nearly 60% of Mississippi farmers do not receive farm subsidies in any given year.

Figure 6, Yazoo Backwater Area Farm Subsidies 1995 to 2019



**Farm Subsidy Payments Per Recipient in Yazoo Backwater Area Zip Codes, 1995-2019**  
**Compiled from the Environmental Working Group Farm Subsidy Database**

ZIP CODE	TOTAL SUBSIDIES	TOTAL RECIPIENTS	TOP FIVE RECIPIENTS	TOP RECIPIENT	FARMS RECEIVING MORE THAN \$1 MILLION
38701	\$67,762,848	576	\$22,712,766	\$7,194,098.06	19
38721	\$77,456,356	247	\$30,888,620	\$9,036,034.68	21
38731	\$19,659,275	43	\$18,497,489	\$6,232,323.25	6
38744	\$44,373,852	151	\$24,600,514	\$8,041,347.43	14
38748	\$195,420,691	494	\$67,719,354	\$20,474,822.20	41
38754	\$26,945,846	182	\$11,122,965	\$3,068,592.91	9
39038	\$112,189,087	561	\$31,289,857	\$10,709,713.62	32
39054	\$25,504,986	87	\$29,316,093	\$8,428,658.15	5
39097	\$49,603,235	144	\$36,435,442	\$15,490,694.85	10
39113	\$8,484,164	68	\$6,427,399	\$3,947,952.38	2
39156	\$12,270,589	84	\$8,620,492	\$3,442,211.37	2
39159	\$148,391,998	474	\$48,992,874	\$14,235,037.72	38
39166	\$15,032,921	74	\$11,394,043	\$8,095,796.40	2
39177	\$18,153,356	54	\$13,713,357	\$6,600,398.14	5
39183	\$25,462,913	301	\$14,012,933	\$4,019,405.06	8
39194	\$206,461,849	1125	\$54,923,294	\$17,362,445.53	58
<b>TOTALS</b>	<b>\$1,053,173,966</b>	<b>4,665</b>	<b>\$430,667,491</b>	<b>\$146,379,532</b>	<b>272</b>

*Figure 7, Farm Subsidy Payments Per Recipient in Yazoo Backwater Area Zip Codes 1995-2019*

As the Corps is aware, an extensive and independent economic review determined that the Yazoo Pumps would do nothing more than “**help landowners grow crops on land that is farmed only to earn farm subsidy payments,**” based on the economic data used by the Corps in the 2007 SEIS.<sup>41</sup> That review also determined that the Yazoo Pumps could not be economically justified even at what was then a \$207 million projected construction cost.<sup>42</sup>

Even if increased production resulting from the Yazoo Pumps did increase profits for some large landowners in the project area, such increased production is unlikely to help other American farmers. Increased production causes overall prices to drop. For example, according

<sup>41</sup> Leonard Shabman & Laura Zepp Review Comments on “Yazoo Backwater Reformulation” dated September 24, 2000 (emphasis in original); see also Leonard Shabman & Laura Zepp, An Approach for Evaluating Nonstructural Actions with Application to the Yazoo River (Mississippi) Backwater Area (February 7, 2000) (prepared in cooperation with the U.S. Environmental Protection Agency, Region 4). Both of these documents were submitted with the Environmental Protection Agency Comments on the 2007 Draft SEIS.

<sup>42</sup> Id.



to a May 2020 article in Barron's, USDA has determined that corn and soybean prices are likely to fall this year due to excess production:

Facing a supply glut, the US Department of Agriculture projects the average farm price for corn will to drop to its lowest level in 14 years in the 2020-2021 growing season. Soybean prices also are expected to fall."<sup>43</sup>

- (6) Even during the prolonged 2019 flood event, 316,000 acres of crops were grown in the Yazoo Backwater Area (more than 55% of the 10-year average acreage of crops grown in the Yazoo Backwater Area), according to USDA data.<sup>44</sup> In addition, Conservation Organizations understand that farmers were eligible to receive disaster relief or other forms of compensation to minimize economic losses due to the inability to plant crops on the Yazoo Backwater Area lands that could not be planted as a result of the 2019 flood event.

Moreover, a scientific study conducted in the Yazoo River basin strongly suggests that the Yazoo Pumps would harm—not help—agricultural production in the Yazoo Backwater Area.<sup>45</sup> This study is discussed at length in Section F.3 of these comments.

- (7) Since completion of the Yazoo Backwater Levee in 1978, flooding in the Yazoo Backwater Area has primarily been restricted to lower elevations (see Figure 8, below). Even as unprecedented flooding inundated communities along the Mississippi, Missouri, and Arkansas Rivers, in 2019, flooding in the Yazoo Backwater Area was predominately restricted to the 20-year floodplain, and just touched the 25-year floodplain elevation at its peak.<sup>46</sup> Between 1978 and 2018, water levels in the Yazoo Backwater Area **never** reached the 20-year floodplain and exceeded the 10-year floodplain just 2 times.<sup>47</sup> As a result, flood damage reduction solutions should focus on avoiding flood damages to homes and critical infrastructure located in these lower elevations.

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<sup>43</sup> Chris Stein, AFP News, *'It's Kind Of Glum': US Farmers Worry As Crop Prices Dip*, Barron's, May 24, 2020 (available at <https://www.barrons.com/news/it-s-kind-of-glum-us-farmers-worry-as-crop-prices-dip-01590370505>).

<sup>44</sup> USDA National Agricultural Statistics Service, CropScape Cropland Data Layer.

<sup>45</sup> Jackson, D. C. and Q. Ye. 2000. Riverine fish stock and regional agronomic responses to hydrologic and climatic regimes in the upper Yazoo River basin. Pages 242-257 in I. G. Cowx, Editor. *Management and Ecology of River Fisheries*. Fishing News Books. Blackwell Science. London. This study was submitted into the record for the veto process on May 5, 2008.

<sup>46</sup> Flood levels rose above the 25 year floodplain for just 8 days, reaching to just 0.23 inches above the 25 year floodplain elevation before receding. This year's flooding was the largest in the YBWA since completion of the Yazoo Backwater Levee in 1978. Between 1978 and 2018, water levels in the YBWA never reached the 20 year floodplain, and those levels exceeded the 10 year floodplain elevation just 2 times. By comparison, flooding in the YBWA reached 101.48 feet in 1973, which is well above the 100 year floodplain elevation. U.S. Army Corps of Engineers Rivergages Website (<http://rivergages.mvr.usace.army.mil>) (a compilation of this data is available from the National Wildlife Federation upon request).

<sup>47</sup> Floodplain elevation level source: USACE, Final EIS Yazoo Backwater Pumping Plant, Main Report at 90 (lower ponding area without project in place) Final Supplement No. 1 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement (2007), Main Report at 90, Table 13 (lower ponding area elevation base conditions); Steele Bayou Landside gage elevation source: USACE, RiverGages.com, <http://rivergages.mvr.usace.army.mil>.



**Yazoo Backwater Area Flood Elevations  
Period of Record 1978 to 2019—Steele Bayou Landside Gage**

Number of Years water reached and slightly exceeded the 25-year floodplain:	1
Number of Years water reached above 10-year and below 20-year floodplain:	2
Number of Years water reached above 5-year and below 10-year floodplain:	5
Number of Years water reached above 3-year and below 5-year floodplain:	2
Number of Years water reached above 2-year and below 3-year floodplain:	5
Number of Years water reached above 1-year and below 2-year floodplain:	17
Number of Years water did not reach the 1-year floodplain:	11

Year	Peak Elevation	Floodplain	Flood Rank
2019	98.23 May 23, 2019	0.23 inches above 25 year	1
2018	95.33	below 10 year	7
2017	88.46	below 2 year	24
2016	91.98	below 3 year	13
2015	95.39	below 10 year	6
2014	95.59	below 10 year	4
2013	90.94	below 2 year	15
2012	85.37	below 1 year	32
2011	89.96	below 2 year	20
2010	95.5	below 10 year	5
2009	93.74	below 5 year	8
2008	92.18	below 3 year	11
2007	85.4	below 1 year	31
2006	80.1	below 1 year	39
2005	90	below 2 year	19-tied
2004	84.7	below 1 year	35
2003	88.4	below 2 year	25
2002	90	below 2 year	19-tied
2001	88.7	below 2 year	23
2000	77.4	below 1 year	40
1999	90.3	below 2 year	17
1998	88.3	below 2 year	26
1997	93.3	below 5 year	9
1996	88.1	below 2 year	27
1995	87.9	below 2 year	28
1994	90.9	below 2 year	16
1993	91.5	below 3 year	14
1992	82.3	below 1 year	36
1991	92.5	below 3 year	10
1990	89.6	below 2 year	22



Year	Peak Elevation	Floodplain	Flood Rank
1989	89.7	below 2 year	21
1988	85.3	below 1 year	33
1987	84.9	below 1 year	34
1986	82.1	below 1 year	37
1985	87.1	below 2 year	29
1984	92	below 3 year	12
1983	95.8	below 10 year	3
1982	90.2	below 2 year	18
1981	80.4	below 1 year	38
1980	90	below 2 year	19-tied
1979	96.5	below 20 year	2
1978	85.7	below 1 year	30

Figure 8, Yazoo Backwater Area Flood Elevation Levels 1978 to 2019, Steele Bayou Landside Gage (Source: USACE Data)

The Corps is currently engaged in multiple planning efforts focused on improving management of the Mississippi River to reduce or better manage flood levels in the Mississippi River.<sup>48</sup> If the measures developed through these studies are implemented, they would further reduce flood risks to the Yazoo Backwater Area by reducing the amount of time that the gates at the Steele Bayou Flood Control Structure would need to be closed. These planning efforts should be accelerated.

- (8) The proposed Yazoo Pumps plan and its 87-foot activation level (as indicated in the Notice of Intent) vastly exceeds the scope of the project's Congressional authorization. As extensively documented in the 2008 Clean Water Act Final Determination, the authorization for the Yazoo Pumps designates lands "located below 90 feet, NGVD, in elevation to serve as a sump area for surface water storage."<sup>49</sup> In 1959, the Corps determined that the authorized level of protection had been met:

Since the original authorization for Yazoo Backwater Protection, important hydraulic changes have taken place due to improvement of channel efficiency in the Mississippi River and to reservoirs and channel improvement in the Yazoo Basin headwater area. These have resulted in less frequent flooding, and shorter duration of flooding, which makes it feasible to develop a simplification of the authorized plan by eliminating pumping at a large saving in project cost. . . . It is apparent that a protection plan for the Yazoo Backwater Area involving levees and floodgates only, which was not feasible under earlier conditions, is now feasible, and will provide a

<sup>48</sup> While the Corps is of course aware of its ongoing planning processes, to our understanding they include an assessment of alternative management regimes for the Old River Control Structure, evaluating needs related to the Mississippi Rivers & Tributaries Project mainline levee system; and examining Mississippi River sediment diversions and other projects to restore Louisiana's coastal wetlands.

<sup>49</sup> 2008 Clean Water Act Final Determination at 7-9.



high degree of protection for the foreseeable future without the necessity of pumping.<sup>50</sup>

- (9) Even during the unprecedented 2019 flood, structural damages within the Yazoo Backwater counties were highly concentrated with **76% of all structural damage** and **85% of all structural monetary damages** occurring in Warren County, which includes the Eagle Lake community and extensive areas located outside of the boundaries of the Yazoo Backwater Area (see Figure 9, below). In 2019, relatively few structures were affected by flooding in Issaquena and Sharkey counties, the two counties located entirely within the Yazoo Backwater Area, according to Mississippi Emergency Management data. Within Issaquena and Sharkey counties a total of 53 homes and 19 mobile homes were affected. Of those, 27 homes had only minor or very minor damage. Data for other counties include large areas that would not be affected by the Pumps.

As discussed in Section F.4 of these comments, multiple factors contributed to the 2019 flooding at Eagle Lake, making it likely that the Eagle Lake community would have suffered flood damages even if the Yazoo Pumps had been operating in 2019. The targeted solutions proposed in the Resilience Alternative would provide reliable solutions to reduce flood damages for the Eagle Lake community.

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<sup>50</sup> Id. (quoting Vicksburg District Corps, MR&T Comprehensive Review Report, Annex L, Yazoo Backwater Project Mississippi at 20 (November 1959)).



# YAZOO BACKWATER 2019 FLOOD DAMAGES\*

**D**uring the prolonged 2019 flood, homes and businesses in the counties that make up the Yazoo Backwater Area sustained \$12.3 million in structural damage. This damage was concentrated in Warren County (including the Eagle Lake community). Warren County sustained 85% of the monetary damage. Flood mitigation, such as elevating structures, purchasing floodplain easements, and elevating flood-prone roads, is rarely practiced in the Yazoo Backwater Area.

## WASHINGTON COUNTY

NO DAMAGES REPORTED

## HUMPHREYS, SHARKEY AND YAZOO COUNTIES

HOMES DAMAGED: 62  
BUSINESSES DAMAGED: 3

TOTAL MONETARY DAMAGE:  
\$560,000

## WARREN COUNTY

HOMES DAMAGED: 358  
BUSINESSES DAMAGED: 14

TOTAL MONETARY DAMAGE:  
\$10,442,000

## % OF ALL FLOOD DAMAGES OCCURRING IN WARREN COUNTY



All structures damaged



All monetary damage



Homes damaged



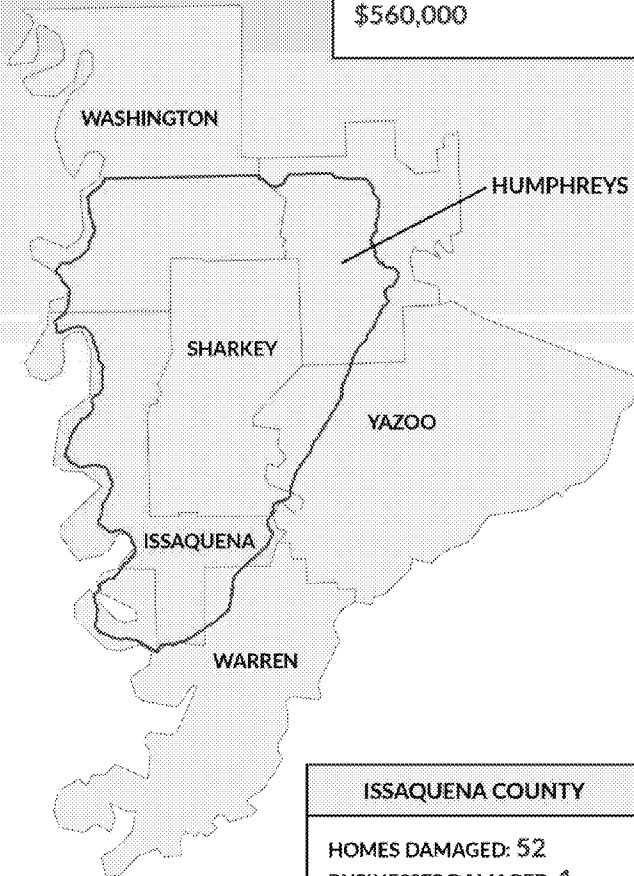
Homes-monetary damage



Businesses damaged



Businesses-monetary damage



## ISSAQUENA COUNTY

HOMES DAMAGED: 52  
BUSINESSES DAMAGED: 1

TOTAL MONETARY DAMAGE:  
\$1,335,000

\*Estimated damages to homes and businesses in counties that fall within the Yazoo Backwater Area, as reported by the Mississippi Emergency Management Agency. It is unclear how much of the damage reported occurred outside the Yazoo Backwater Area (outlined in blue).

Figure 9, Yazoo Backwater Area 2019 Flood Damages Reported by Mississippi Emergency Management Agency



- (10) Ample evidence demonstrates that natural infrastructure (natural and nature-based solutions) and non-structural solutions can provide highly effective, and cost-effective flood damage reduction and flood avoidance benefits for communities. Indeed, the Reinsurance Association of America has concluded that: “One cannot overstate the value of preserving our natural systems for the protection of people and property from catastrophic events.”<sup>51</sup>

The value of wetlands for reducing flood risks has long been recognized by the Corps. For example, in a 1972 study evaluating options to reduce flooding along Charles River in Massachusetts, the Corps concluded:

Nature has already provided the least-cost solution to future flooding in the form of extensive [riverine] wetlands which moderate extreme highs and lows in streamflow. Rather than attempt to improve on this natural protection mechanism, it is both prudent and economical to leave the hydrologic regime established over millennia undisturbed.<sup>52</sup>

A single acre of wetland can store 1.5 million gallons of floodwaters.<sup>53</sup> Just a 1 percent loss of a watershed’s wetlands can increase total flood volume by almost seven percent.<sup>54</sup> Wetlands prevented \$625 million in flood damages in the 12 coastal states affected by Hurricane Sandy, and reduced damages by 20 to 30 percent in the four states with the greatest wetland coverage.<sup>55</sup> Coastal wetlands reduced storm surge in some New Orleans neighborhoods by two to three feet during Hurricane Katrina, and levees with wetland buffers had a much greater chance of surviving Katrina’s fury than levees without wetland buffers.<sup>56</sup>

A 2018 study shows that in the Gulf Coast regions of Texas, Louisiana, Mississippi, and Florida, nature-based solutions to reduce coastal flood risks are significantly more cost effective than structural solutions. A 2018 study shows that in this region, **the average benefit-cost ratio for nature-based solutions is 3.5 compared to 0.26 for levees/dikes.** Restoring wetlands could prevent \$18.2 billion of losses while costing just \$2 billion to carry out.<sup>57</sup>

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<sup>51</sup> Restore America’s Estuaries, *Jobs & Dollars BIG RETURNS from coastal habitat restoration* (September 14, 2011) ([http://www.estuaries.org/images/81103-RAE\\_17\\_FINAL\\_web.pdf](http://www.estuaries.org/images/81103-RAE_17_FINAL_web.pdf)).

<sup>52</sup> American Rivers, *Unnatural Disasters, Natural Solutions: Lessons From The Flooding Of New Orleans* (2006) (quoting USACE, from Massachusetts Department of Fish and Game, *Functions of Riparian Areas for Flood Control*, [http://www.mass.gov/dfwle/river/pdf/riparian\\_factsheet\\_1.pdf](http://www.mass.gov/dfwle/river/pdf/riparian_factsheet_1.pdf)).

<sup>53</sup> Environmental Protection Agency, “Wetlands: Protecting Life and Property from Flooding.” EPA 843-F-06-001. (2006) (factsheet).

<sup>54</sup> Demissie, M. and Abdul Khan. 1993. “Influence of Wetlands on Streamflow in Illinois.” Illinois State Water Survey, Contract Report 561, Champaign, IL, Table 7, pp. 44-45.

<sup>55</sup> Narayan, S., Beck, M.B., Wilson, P., et al., The Value of Coastal Wetlands for Flood Damage Reduction in the Northeastern USA. *Scientific Reports* 7, Article number 9463 (2017), doi:10.1038/s41598-017-09269-z (available at <https://www.nature.com/articles/s41598-017-09269-z>).

<sup>56</sup> Bob Marshall, *Studies abound on why the levees failed. But researchers point out that some levees held fast because wetlands worked as buffers during Katrina’s storm surge*, New Orleans Times-Picayune (March 23, 2006).

<sup>57</sup> Borja G. Reguero et al., “Comparing the Cost Effectiveness of Nature-Based and Coastal Adaptation: A Case Study from the Gulf Coast of the United States,” *PLoS ONE* 13, no. 4 (April 11, 2018),



Communities across the country are successfully using natural infrastructure and non-structural approaches to reduce flood risks. For example:

- In California, the Napa Valley Flood Control Project is using a community-developed “living river” plan to reduce flood damages along the flood-prone Napa River. This plan replaces the Corps’ originally-proposed floodwalls and levees with terraced marshes, wider wetland barriers, and restored riparian zones. The Project will restore more than 650 acres of high-value tidal wetlands of the San Francisco Bay Estuary while protecting 2,700 homes, 350 businesses, and over 50 public properties from 100-year flood levels, saving \$26 million annually in flood damage costs.<sup>58</sup> Though only partially complete, the project was credited for lowering flood levels by about 2 to 3 feet during the 2006 New Year’s Day flood.
- In Florida, the Corps is using wetland restoration in the Upper St. John’s River floodplain to provide important flood damage reduction benefits. The backbone of this project is restoration of 200,000 acres of floodplain which will hold more than 500,000 acre-feet of water—enough to cover 86 square miles with 10 feet of water—and will accommodate surface water runoff from a more than 2,000 square mile area. The Corps predicts that this \$200 million project will reduce flood damages by \$215 million during a 100-year flood event, and provide average annual benefits of \$14 million. This project was authorized by Congress in 1986 to reduce flood damages along the river.<sup>59</sup>
- In Illinois, a 2014 study conducted for the Chicago Wilderness Green Infrastructure Vision, found that natural systems are the least costly and most efficient way to control flooding. Wetlands in the seven-county Chicago metropolitan area provide an average \$22,000 of benefits per acre each year in water flow regulation. This study also found that watersheds with 30 percent wetland or lake areas saw flood peaks that were 60 to 80 percent lower than watersheds without such coverage, and that preventing building in floodplain areas could save an average of \$900 per acre per year in flood damages.<sup>60</sup>
- In Iowa, the purchase of 12,000 acres in easements along the 45-mile Iowa River corridor saved local communities an estimated \$7.6 million in flood damages as of 2009. The easement purchase effort began after the historic 1993 floods when river communities in east-central Iowa recognized the need for a more effective approach to reducing flood damages.

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<https://doi.org/10.1371/journal.pone.0192132> (also finding that restoring oyster reefs could prevent \$9.7 billion in losses at a cost of \$1.3 billion; restoring barrier islands could prevent \$5.9 billion in losses at a cost of \$1.2 billion).

<sup>58</sup> Napa County California website at <https://www.countyofnapa.org/1096/Creating-Flood-Protection>.

<sup>59</sup> American Rivers, *Unnatural Disasters, Natural Solutions: Lessons From The Flooding Of New Orleans* (2006) (Upper St. Johns River case study).

<sup>60</sup> Will Allen, Ted Weber, and Jazmin Varela, *Green Infrastructure Vision: Version 2.3: Ecosystem Service Valuation*. (The Conservation Fund: 2014), 13-15, <https://datahub.cmap.illinois.gov/dataset/c303fd2e-beaf-4a75-a9ec-b27c6da49b69/resource/028c9b69-bb19-425e-bb92-3d33656bea4c/download/tcfcmappiv23ecosystemservesfinalreport201412v2.pdf>.



- In Massachusetts, a 1972 Corps study showed that upstream wetlands were playing a critical role in reducing flooding in the middle and upper reaches of the Charles River by storing millions of gallons of water and preventing \$17 million each year in flood damages. This led the Corps to preserve 8,000 floodplain acres to ensure future flood storage, at a cost of just one-tenth of the structural project it had previously planned to build. This approach was sanctioned by Congress in 1974 when it authorized the Charles River Natural Valley Storage Area. These floodplain wetlands are credited with reducing major floods, including in 1979, 1982, and 2006. The Corps estimates that this project has prevented \$11.9 million in flood damages while providing recreational benefits valued at between \$3.2 and \$4.6 million.<sup>61</sup>
- In New York, restoration of wetlands and lands adjacent to 19 stream corridors in Staten Island “successfully removed the scourge of regular flooding from southeastern Staten Island, while saving the City \$300 million in costs of constructing storm water sewers.”<sup>62</sup> Some 400 acres of freshwater wetland and riparian stream habitat has been restored along 11 miles of stream corridors that collectively drain about one third of Staten Island’s land area. A 2018 study commissioned by the City of New York found that using “hybrid infrastructure” that combines nature, nature-based, and gray infrastructure together could save Howard Beach, Queens \$225 million in damages in a 100-year storm while also generating important ecosystem services.<sup>63</sup>
- In Oregon, the Portland Bureau of Environmental Services restored 63 acres of wetland and floodplain habitat, restored 15 miles of Johnson Creek, and move structures out of high-risk areas to reduce flood damages in the Johnson Creek neighborhood. In January 2012, when heavy rainfall caused Johnson Creek to rise two feet above its historic flood stage, the restored site held the floodwaters, keeping nearby homes dry and local businesses open. An ecosystem services valuation of the restored area found that the project would provide \$30 million in benefits (in 2004 dollars) over 100 years through avoided property and utility damages, avoided traffic delays, improved water and air quality, increased recreational opportunities, and healthy fish and wildlife habitat.<sup>64</sup>
- In Texas, restoration of a 178-acre urban wetland—formerly an abandoned golf course—acted as a sponge to store 100 million gallons of water during Hurricane Harvey, protecting 150 homes in Houston’s Clear Lake community from serious flooding. This project will store up to a half billion gallons of water and protect 3,000 homes when completed in 2021.<sup>65</sup>

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<sup>61</sup> American Rivers, *Unnatural Disasters, Natural Solutions: Lessons From The Flooding Of New Orleans* (2006) (Charles River Valley Natural Storage Area case study); and

<https://www.arcgis.com/apps/MapJournal/index.html?appid=0bf97d033a8642b18c2e8075d4b5ecfe>.

<sup>62</sup> Cooper Union, Institute for Sustainable Design, *The Staten Island Bluebelt: A Study In Sustainable Water Management* (<http://cooper.edu/isd/news/waterwatch/statenisland>). These effort was started in 1990.

<sup>63</sup> The Nature Conservancy, *Urban Coastal Resilience: Valuing Nature’s Role*. (2015), <https://www.nature.org/content/dam/tnc/nature/en/documents/urban-coastal-resilience.pdf>.

<sup>64</sup> “Johnson Creek Restoration, Portland, Oregon,” *Naturally Resilient Communities*, accessed November 12, 2019, <http://nrcsolutions.org/johnson-creek-restoration-portland-oregon/>.

<sup>65</sup> Exploration Green, 2018, <https://www.explorationgreen.org/>.



- In Vermont, a vast network of floodplains and wetlands, including those protected by 23 conservation easements protecting 2,148 acres of wetland along Otter Creek, saved Middlebury \$1.8 million in flood damages during Tropical Storm Irene, and between \$126,000 and \$450,000 during each of 10 other flood events. Just 30 miles upstream, in an area without such floodplain and wetland protections, Tropical Storm Irene caused extensive flooding to the city of Rutland.

#### D. The SEIS Must Fully Analyze Direct, Indirect, and Cumulative Impacts

The SEIS must examine, among other things, the direct, indirect, and cumulative environmental impacts of alternatives, the conservation potential of those alternatives, and the means to mitigate adverse environmental impacts that cannot be avoided.<sup>66</sup> These assessments are essential for: understanding the impacts of the various alternatives; determining whether less environmentally damaging alternatives are available; making a reasoned choice among alternatives; identifying the least environmentally damaging alternative, as required by the Clean Water Act; ensuring compliance with the Endangered Species Act; and identifying alternatives that would protect and restore the functions of the Yazoo Backwater Area, as required by the National Water Resources Planning Policy.<sup>67</sup>

Direct impacts are caused by the action and occur at the same time and place as the action. Indirect impacts are also caused by the action, but are later in time or farther removed from the location of the action.<sup>68</sup> Cumulative impacts are:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.<sup>69</sup>

The cumulative impacts analysis ensures that the agency will not “treat the identified environmental concern in a vacuum.”<sup>70</sup> The cumulative impacts analysis must examine the cumulative effects of federal, state, and private projects and actions.<sup>71</sup> The cumulative impacts analysis must also evaluate the cumulative impacts of climate change.<sup>72</sup>

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<sup>66</sup> 40 C.F.R. § 1502.16.

<sup>67</sup> 42 USC 1962–3(a).

<sup>68</sup> 40 C.F.R. § 1508.8.

<sup>69</sup> 40 C.F.R. § 1508.7.

<sup>70</sup> *Grand Canyon Trust v. FAA*, 290 F.3d 339, 346 (D.C. Cir. 2002).

<sup>71</sup> The requirement to assess non-Federal actions is not “impossible to implement, unreasonable or oppressive: one does not need control over private land to be able to assess the impact that activities on private land may have” on the project area. *Resources Ltd., Inc. v. Robertson*, 35 F.3d 1300, 1306 (9th Cir. 1993).

<sup>72</sup> See *Center for Biological Diversity v. Nat’l Hwy Traffic Safety Administration*, 538 F.3d 1172, 1217 (9th Cir. 2008) (holding that analyzing the impacts of climate change is “precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct” and that NEPA requires analysis of the cumulative impact of greenhouse gas emissions when deciding not to set certain CAFE standards); *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 711 (9th Cir. 2009) (NEPA analysis properly included analysis of the effects of climate change on polar bears, including “increased use of coastal environments, increased bear/human encounters, changes in polar bear body condition, decline in cub survival, and increased potential for stress and mortality, and energetic needs in hunting for seals, as well as traveling and swimming to denning sites and feeding areas.”).



Importantly, as the Council on Environmental Quality has made clear, in situations like those in the Yazoo Backwater Area where the environment has already been greatly modified by human activities, it is **not** sufficient to compare the impacts of the proposed alternative against the current conditions. Instead, the baseline must include a clear description of how the health of the resource has changed over time to determine whether additional stresses will push it over the edge.<sup>73</sup>

The SEIS must provide “quantified or detailed information” on the impacts, including the cumulative impacts, so that the courts and the public can be assured that the Corps has taken the mandated hard look at the environmental consequences of the project.<sup>74</sup> **If information that is essential for making a reasoned choice among alternatives is not available, the Corps must obtain that information unless the costs of doing so would be “exorbitant.”**<sup>75</sup>

To properly analyze impacts from the Yazoo Pumps, it is also essential that the SEIS provide a detailed operating plan for the Yazoo Pumps, and examine the full suite of impacts in light of that operating plan and reasonably foreseeable deviations from that plan because the Corps retains the ability to modify operating plans. The SEIS must also fully analyze and account for all impacts related to building the Pumps and supporting infrastructure at the Deer Creek location. See Section D.5, below.

### 1. Impacts to Wetlands

As the 2008 Clean Water Act Final Determination makes clear, the “construction and operation of the proposed Pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated.”<sup>76</sup> The ecological implications of these changes are enormous, because hydrology is “the single most important determinant of the establishment and maintenance of specific types of wetlands and wetland processes.”<sup>77</sup>

Among many other things:

Hydrology affects species composition and richness, primary productivity, organic accumulation, and nutrient cycling in wetlands. . . . Water depth, flow patterns, and duration and frequency of flooding, which are the result of all the hydrologic inputs and outputs, influence the biochemistry of the soils and are major factors in the ultimate selection of the biota of wetlands. . . . the hydrology of a wetland directly modifies and changes its physiochemical environment (chemical and physical properties), particularly oxygen availability and related chemistry, such as nutrient availability, pH, and toxicity (e.g., the production of hydrogen sulfide). Hydrology also transports sediments, nutrients, and even toxic materials into wetlands, thereby further influencing the physiochemical environment. . . . Hydrology also causes water outflows from

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<sup>73</sup> Council on Environmental Quality, Considering Cumulative Effects Under the National Environmental Policy Act at 41 (January 1997).

<sup>74</sup> *Neighbors of Cuddy Mountain v. U. S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 87 (2d Cir. 1975).

<sup>75</sup> 40 C.F.R. § 1502.22 (emphasis added).

<sup>76</sup> 2008 Final Determination at i.

<sup>77</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (5th ed.) (2015) at 112 (emphasis in original).



wetlands that often remove biotic and abiotic material, such as dissolved organic carbon, excessive salinity, toxins, and excess sediments and detritus.”<sup>78</sup>

Critically, even small alterations in wetland hydrology can produce significant, ecosystem-wide changes, as the seminal textbook on wetlands makes clear:

**When hydrologic conditions in wetlands change even slightly, the biota may respond with massive changes in species composition and richness and in ecosystem productivity.**<sup>79</sup>

Wetlands maintained by overbank flooding are particularly productive: “Pulse-fed wetlands are often the most productive wetlands and are the most favorable for exporting materials, energy, and biota to adjacent ecosystems.”<sup>80</sup> The many significant ecological values of riverine wetlands are discussed at length in the 2008 Clean Water Act Final Determination (including the Technical Appendices) and in the comments on the 2007 SEIS submitted by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, independent scientists, conservation community, and the public. These comments should be fully considered by the Corps in preparing this SEIS and should be included in the administrative record for this SEIS.

The Corps recognizes that pulse-fed riverine wetlands provide at least three critical functions that are not provided by non-riverine wetlands (detaining floodwater, exporting organic carbon, and removing elements and compounds).<sup>81</sup> Riverine wetlands provide essential habitat for many species of fish and wildlife, including critical spawning habitat.<sup>82</sup> Typically, at least 7 consecutive days of overbank flooding are required to trigger spawning.

The Corps’ 2013 Guidebook on the Hydrogeomorphic Approach (HGM) to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley (which includes the Mississippi Yazoo Backwater Area) states that the 5-year floodplain is the cut-off between riverine and other types of wetlands: “a wetland must be in the 5-year floodplain of a stream system to be included within the Riverine Class. This return interval is regarded as sufficient to support major functions that involve periodic connection to stream systems.”<sup>83</sup>

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<sup>78</sup> Id. at 111-112.

<sup>79</sup> Id. at 112 (emphasis added).

<sup>80</sup> Id. at 119.

<sup>81</sup> USACE Engineer Research and Development Center, *A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley*, ERDC/EL TR-13-14 (July 2013) at 27. This HGM Guidebook assigns 6 functions to pulse-fed wetlands with a return interval of 5 years or less (detain floodwater, export organic carbon, detain precipitation, cycle nutrients, maintain plant communities, and provide fish and wildlife habitat), but assigns just 4 functions to non-riverine wetlands (detain precipitation, cycle nutrients, maintain plant communities, and provide fish and wildlife habitat). The Corps’ 2002 HGM Guidebook, developed for the Yazoo Pumps project, assigns a third function that is only supplied by pulse-fed riverine wetlands (remove elements and compounds). USACE Engineer Research and Development Center, *A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Selected Regional Wetland Subclasses, Yazoo Basin, Lower Mississippi River Alluvial Valley*, ERDC/EL TR-02-4 (April 2002).

<sup>82</sup> See, e.g. 2008 Clean Water Act Final Determination, Technical Appendices.

<sup>83</sup> USACE Engineer Research and Development Center, *A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Functions of Forested Wetlands in the Mississippi Alluvial Valley*, ERDC/EL TR-13-14 (July 2013) at 27.



Despite the importance of wetlands in the 5-year floodplain and of wetlands that receive less than 14 consecutive days of flooding (often referred to as “short-hydroperiod wetlands”), the 2007 FSEIS arbitrarily and inappropriately excluded consideration of these types of wetlands.<sup>84</sup> The 2007 FSEIS acknowledges that it did **not** evaluate impacts to short-hydroperiod wetlands, and did **not** evaluate impacts to wetlands sustained by sources other than backwater flooding.<sup>85</sup>

As a result of these arbitrary limits, the 2007 FSEIS completely excluded consideration of impacts to at least 24,000 acres of wetlands in the 2-year floodplain and to all wetlands located outside the 2-year floodplain, as recognized in the 2008 Clean Water Act Final Determination:<sup>86</sup>

EPA’s concerns regarding this proposed project are amplified because we believe the spatial extent of wetlands potentially impacted by the proposed project is much greater than that estimated in the FSEIS. As discussed in Appendix 5, EPA’s Environmental Monitoring and Assessment Program (EMAP) analysis identified approximately 52,000 acres of wetlands which are located on the 2-year floodplain but outside of the wetland assessment area established in the FSEIS (Figure 5). EPA believes that as much as 24,000 acres of these 52,000 acres of wetlands are connected to backwater flooding and will be adversely impacted by the project to an even greater degree than the wetlands considered in the FSEIS. However, the FSEIS did not evaluate impacts to these wetlands.<sup>87</sup>

The 2007 FSEIS also acknowledged that calculating **if** it had calculated impacts based on the “upper 90 percent confidence” range, it would have concluded that operation of the Yazoo Pumps would affect **95,200 acres of wetlands**, with 44,600 acres of wetlands becoming non-jurisdictional and an additional 50,600 acres of wetlands suffering changes in the duration of inundation.<sup>88</sup> The 2007 FSEIS did not explain why it did not rely on this confidence range.

The gross underestimate of wetland impacts in the 2007 FSEIS was also documented in a January 2008 independent hydrology analysis prepared by Nutter & Associates, which concluded that **the Corps’ 2007 SEIS failed to account for at least 37,000 additional acres of wetlands that would be completely drained by the Yazoo Pumps, and failed to account for the harm to a substantial number of additional wetland acres due to changes to the duration and extent of inundation of those wetlands.**<sup>89</sup>

Given the significant ecological value of the Yazoo Backwater Area wetlands—and the importance of adverse wetland impacts to fish and wildlife, water quality, flood damage reduction, and project costs

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<sup>84</sup> The many additional failings in the 2007 FSEIS are documented in the May 5, 2008 comments of American Rivers, Delta Land Trust, Earthjustice, Environment America, Environmental Defense Fund, Gulf Restoration Network, National Audubon Society, National Wildlife Federation, Sierra Club, and the Surfrider Foundation—Central Gulf Coast Chapter on the Proposed Determination to prohibit the use of disposal sites for dredged or fill material in connection with the construction of the Yazoo Backwater Area Project. These comments are provided at Attachment F to these comments. Many other commenters also highlighted the major problems with the 2007 FSEIS, making it fundamentally inappropriate for the Corps to tier this SEIS to the 2007 FSEIS.

<sup>85</sup> 2007 FSEIS Main Report at 141.

<sup>86</sup> 2008 Clean Water Act Final Determination at iii, 3, 45.

<sup>87</sup> 2008 Clean Water Act Final Determination at 45-47.

<sup>88</sup> 2007 FSEIS Main Report at 142.

<sup>89</sup> Nutter & Associates, Inc., Technical Memorandum No. 07-059.01, Review of the USACE Yazoo River Backwater Area Reformulation Report, Prepared for National Wildlife Federation American Rivers, January 22, 2008. A copy of this report is provided at Attachment G to these comments.



and benefits, among many other things—it is essential that the new SEIS properly account for the full suite of wetland impacts.

However, based on the Corps' draft Wetlands Analysis for the new SEIS (which was provided in response to a Freedom of Information Act request), the Corps is not carrying out the analyses required to properly account for the full suite of wetland impacts. Among many other failings, the draft Wetlands Analysis is only examining impacts to wetlands that receive  $\geq 14$  consecutive days of flooding—ignoring many other impacts to wetlands that among other things, will result in substantial harm to fish and wildlife. A copy of the draft Wetlands Analysis is provided at Attachment B to these comments.

The SEIS must provide at least the following information to ensure that the SEIS accurately addresses the geographic extent of wetland impacts in the project area:

- (1) The SEIS must provide the areal extent (number of acres) of wetlands in the 5-year floodplain without the project, and the areal extent of wetlands that will be in the 5-year floodplain with the project—*i.e.*, a full assessment of wetland acres that will no longer be in the 5-year floodplain with the project. It is also important that the Corps provide the GIS shapefile polygons for the 5-year floodplain with and without the project on the Yazoo Backwater Pumps website “**as quickly as practicable**” after they are generated, as required by law, so that the public can have prompt access to this critical planning data.<sup>90</sup>

There is no scientific basis or rational justification for failing to evaluate impacts to wetlands located above the 2-year floodplain or to short-hydroperiod wetlands as the Corps had done in the draft Wetland Analysis and as the Corps did in 2007. To the contrary, the fundamental underpinnings of the science of wetland functions and values, ecological processes, ecosystem services, and fish and wildlife habitat requirements, make clear that impacts to these types of wetlands must in fact be assessed.

- (2) The SEIS must provide the areal extent (number of acres) of wetlands in the 2-year floodplain without the project, and the areal extent of wetlands that will be in the 2-year floodplain with the project—*i.e.*, a full assessment of wetland acres that will no longer be in the 2-year floodplain with the project. It is also important that the Corps provide the GIS shapefile polygons for the 2-year floodplain with and without the project on the Yazoo Backwater Pumps website “as quickly as practicable” after they are generated, as required by law, so that the public can have prompt access to this critical planning data.<sup>91</sup>
- (3) The SEIS must provide the areal extent (number of acres) of wetlands that receive equal to or greater than 14 consecutive days of flooding without the project, and the areal extent of wetlands that receive equal to or greater than 14 consecutive days of flooding

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<sup>90</sup> 33 U.S.C. § 2342 (emphasis added) (the “Secretary shall make publicly available, including on the Internet, all data in the custody of the Corps of Engineers on . . . the planning, design, construction, operation, and maintenance of water resources development projects . . . as quickly as practicable after the data is generated by the Corps of Engineers.”)

<sup>91</sup> *Id.*



with the project—*i.e.*, a full assessment of the wetland acres that will no longer receive equal to or greater than 14 consecutive days of flooding with the project. It is also important that the Corps provide the GIS shapefile polygons for these areas with and without the project on the Yazoo Backwater Pumps website “as quickly as practicable” after they are generated, as required by law, so that the public can have prompt access to this critical planning data.<sup>92</sup>

- (4) The SEIS must provide the areal extent (number of acres) of wetlands that receive equal to or greater than 7 consecutive days of flooding without the project, and the areal extent of wetlands that receive equal to or greater than 7 consecutive days of flooding with the project—*i.e.*, a full assessment of the wetland acres that will no longer receive equal to or greater than 7 consecutive days of flooding with the project. It is also important that the Corps provide the GIS shapefile polygons for these areas with and without the project on the Yazoo Backwater Pumps website “as quickly as practicable” after they are generated, as required by law, so that the public can have prompt access to this critical planning data.<sup>93</sup> As noted above, there is no scientific basis or rational justification for failing to evaluate impacts to short-hydroperiod wetlands or to wetlands located above the 2-year floodplain as the Corps did in 2007 and as the Corps continues to do in the draft Wetlands Analysis.
- (5) The SEIS must provide detailed information on the changes that would result from construction and operation of the Yazoo Pumps to: the areal extent of inundation, depth of inundation, and duration of inundation of all wetlands that currently receive equal to or greater than 14 consecutive days of flooding.
- (6) The SEIS must provide detailed information on the changes that would result from construction and operation of the Yazoo Pumps to: the areal extent of inundation, depth of inundation, and duration of inundation of all wetlands that currently receive equal to or greater than 7 consecutive days of flooding.
- (7) The SEIS must provide detailed information on the direct and indirect impacts to wetlands, streams, and groundwater that will occur as a result of siting and operating the Pumps at the Deer Creek site. Among many other things, this must include an analysis of wetland impacts that would result from operating the Pumps when the Steele Bayou gates are open—which could occur since the structural limitations on operating that Pumps when the gates are open (*i.e.*, with the gates open, the flow of water through the Pumps would overwhelm the pump mechanism) may no longer apply at the Deer Creek location. See Section D.5 of these comments for additional information needs related to relocating the Yazoo Pumps to the Deer Creek site.
- (8) The SEIS must provide the underlying data and assumptions relied on by the Corps to establish: (i) floodplain elevations without the project; (ii) floodplain elevations with the project; and (iii) stage frequency curves with and without the project. This information is fundamental to assessing impacts and project costs and benefits, and should be fully available for public review and comment. It is also important that the Corps provide this

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<sup>92</sup> Id.

<sup>93</sup> Id.



information on the Yazoo Backwater Pumps website “as quickly as practicable” after it is generated, as required by law, so that the public can have prompt access to this critical planning data.<sup>94</sup>

(9) The SEIS must provide detailed information on all conservation and easement lands in the project area, and the wetlands on those lands that will be affected by the Yazoo Pumps, including:

- All federally-owned conservation lands (*e.g.*, National Wildlife Refuge lands, National Forest lands);
- All state-owned conservation lands (*e.g.*, State Wildlife Management Areas and other state-owned lands);
- All lands enrolled in the U.S Department of Agriculture Wetland Reserve Easement Program, Floodplain Easement Program, or Conservation Reserve Program;
- All lands owned or managed by the Corps for mitigation or for other purposes, and all lands subject to Corps flood or flowage easements. The Conservation Organizations understand that the Corps owns permanent flood easements on at least 19,463 acres of land in the Yazoo Backwater Area and has purchased many thousands of acres of mitigation lands in the Yazoo Backwater Area for other water resources projects; and
- All privately owned conservation lands.

No agricultural or other flood damage reduction benefits may be calculated for conservation and easement lands in the Yazoo Backwater Area. Instead, the value of the ecosystem services lost due to adverse project impacts on these lands must be quantified and accounted for as a project cost in the benefit-cost assessment. It is critical that the SEIS fully inform the public and decision-makers about the adverse impacts that the Yazoo Pumps would cause to the wetlands, streams, and other natural systems on lands and conservation easements that have been purchased, or are being managed, for conservation purposes using federal and state taxpayer dollars. See Section C.2 and Figures 3 and 4, above.

(10) The SEIS must provide detailed information on all lands that fall under the following land use categories in the project area, and the adverse impacts to wetlands located on those lands as a result of the Yazoo Pumps, including: crop land, forest land, fallow land, and lands with soils identified as 4W+ soils under the USDA Land Classification system. Information on these land use categories is readily available from the U.S. Department of Agriculture (USDA) CropScape database<sup>95</sup> and other USDA sources. This information is essential for ensuring a meaningful evaluation of impacts, an effective evaluation of all reasonable alternatives as required by law, and proper evaluation of project costs and benefits.

The USDA Land Capability Classification system rates soils based on their degree of limitations for farming. Lands rated as Classes 4W to 8W, which are commonly referred

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<sup>94</sup> Id.

<sup>95</sup> USDA CropScape database (<https://nassgeodata.gmu.edu/CropScape/>).



to as 4W+ soils, are the wettest soils and have “severe limitations” on farming, according to the USDA. In general, 4W+ lands are saturated or inundated from 50 to 100 percent of growing seasons. These lands were exempted from county caps on Wetland Reserve Easements by the 2014 Farm Bill, and reforestation of these lands is a conservation priority.

The USDA Land Capability Classification system provides the following definitions applicable to 4W+ soils:

- “Class 4 soils have very severe limitations that restrict the choice of plants or require very careful management, or both.”<sup>96</sup>
- “Class 5 soils have little or no hazard of erosion but have other limitations, impractical to remove, that limit their use mainly to pasture, range, forestland, or wildlife food and cover.”<sup>97</sup>
- “Class 6 soils have severe limitations that make them generally unsuited to cultivation and that limit their use mainly to pasture, range, forestland, or wildlife food and cover.”<sup>98</sup>
- “Class 7 soils have very severe limitations that make them unsuited to cultivation and that restrict their use mainly to grazing, forestland, or wildlife.”<sup>99</sup>
- “Class 8 soils and miscellaneous areas have limitations that preclude their use for commercial plant production and limit their use to recreation, wildlife, or water supply or for esthetic purposes.”<sup>100</sup>
- “Subclass w is made up of soils for which excess water is the dominant hazard or limitation affecting their use. Poor soil drainage, wetness, a high water table, and overflow are the factors that affect soils in this subclass.”<sup>101</sup>

USDA data shows 296,126 acres of 4W+ soils in the Yazoo Backwater Area. Most of the remaining unprotected 4W+ soils are adjacent to existing conservation lands, making them particularly important conservation priorities. See Section C.2 and Figure 4, above.

- (11) The SEIS must provide a detailed explanation of the models, underlying assumptions, and data inputs used to develop the new baseline wetland calculations in the draft Wetlands Analysis—this information is only vaguely touched upon in the draft Wetlands Analysis. The SEIS must also provide a detailed explanation regarding how the new baseline wetland calculations can be reconciled with: (i) the significantly larger area of 2-year floodplain baseline wetlands identified through the statistically valid field sample carried out in 2003 (the 2003 EMAP analysis); and (ii) the significant increases in

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<sup>96</sup> USDA, Land Classification System

([http://www.nrcrd.org/files/4414/0968/3285/NRCS\\_Land\\_Capability\\_Classes.pdf](http://www.nrcrd.org/files/4414/0968/3285/NRCS_Land_Capability_Classes.pdf) and <https://www.ars.usda.gov/ARUserFiles/np215/Food%20security%20talk%20inputs%20Lunch%203-15-11.pdf>; [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/?cid=nrcs143\\_014040](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/?cid=nrcs143_014040)).

<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.



conservation land acreage in the Yazoo Backwater Area since the 2007 SEIS, including tens of thousands of acres of additional lands enrolled in the Wetland Reserve Easement program, which includes restoration of wetland characteristics on enrolled lands.

- The 2007 SEIS concluded that there were 189,000 acres of wetlands in the  $\geq 14$  day duration flood zone (the 2-year floodplain; the 2007 SEIS did not evaluate impacts above the 2-year floodplain and did not evaluate all wetland impacts in the 2-year floodplain, as discussed above).
- The 2003 EMAP analysis found 179,120 acres of baseline wetlands in the 2-year floodplain.<sup>102</sup> The 2003 EMAP analysis is a statistically valid field sampling survey that used EPA's Environmental Monitoring and Assessment Program (EMAP) to ground-truth the baseline wetland acreage. The 2003 EMAP survey was conducted by the U.S. Environmental Protection Agency, the Corps, the U.S. Fish and Wildlife Service, and the Natural Resource Conservation Service.<sup>103</sup>
- The draft Wetlands Analysis, on the other hand, concludes that only 69,465 acres of baseline wetlands exist in the 2-year floodplain (which it describes as the area within the  $\geq 14$  day duration flood zone "potentially sustained by flood inputs").<sup>104</sup>

The dramatic difference between the 2003 EMAP statistically valid field sampling survey and the new wetland baseline strongly suggest that the new wetland baseline acreage numbers are incorrect. The new wetland baseline also appears to be incompatible with the increase in Wetland Reserve Easements and other conservation lands in the Yazoo Backwater Area.

- (12) If the wetland baseline numbers in the draft Wetland Analysis are accurate, it means that between 109,655 and 120,015 acres of wetlands were lost in just the 2-year floodplain in the Yazoo Backwater Area since approximately 1978 (when the Yazoo Backwater Levee was completed), despite *increased* conservation of wetland acres over this same timeframe. According to the Corps' 2007 documentation (based on the FEAT analysis) and the 2003 EMAP ground-truthing analysis, these wetlands existed in the 2003-2007 timeframe. If these wetlands have in fact been lost, the SEIS must fully account for these highly significant losses, including in the cumulative impacts and alternatives analyses.
- (13) A detailed explanation of the models, underlying assumptions, data inputs, and rationales employed to impose the following limitations and reach the following conclusions in the draft Wetlands Analysis—this information is only vaguely touched upon in the draft Wetlands Analysis:

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<sup>102</sup> 2008 Clean Water Act Final Determination, Appendix 5 at Table 2.

<sup>103</sup> Id. at Appendix 5.

<sup>104</sup> Draft Wetland Analysis at 109.



- a. *“Potential wetland impacts consider hydrologic alternations to areas exhibiting flooding for  $\geq 14$  days.”*<sup>105</sup> As discussed above, there is no scientific justification for limiting consideration of wetland impacts to these areas. The SEIS should provide a detailed, quantified, and comprehensive explanation for imposing this highly significant limitation on the wetland impacts analysis.
- b. *“All HGM calculations utilized the mid-point of each flood duration range.”*<sup>106</sup> It is unclear why this mid-point was utilized. Since the length and level of inundation has significant implications for ecological services and outcomes, utilizing this midpoint could mask critical adverse impacts. *See also*, the points raised below regarding the many problems with the Corps’ HGM analysis.
- c. *“The analysis of direct impacts was not altered from the [2007 SEIS] due to the expectation that the physical footprint and associated impacts to wetlands remain consistent with previous estimates.”*<sup>107</sup> The calculation of functional values for the direct wetland impacts was also based on the 2007 SEIS project location.<sup>108</sup> These assessments of direct wetland impacts cannot be correct since the location of the Pumps has been changed. The SEIS must assess the direct impacts associated with the Deer Creek Site.

Critically, the many flaws in the 2007 HGM analysis should preclude its use, or any type of reliance on that analysis. The 2008 Clean Water Act Final Determination rejects the 2007 HGM analysis as fundamentally flawed:

EPA believes that certain modeling assumptions and factors used by the Corps in the application of these assessment tools lead to a significant underestimation of the proposed pumping station’s adverse impacts on the aquatic ecosystem, as well as a significant overestimation of the project’s environmental benefits. These concerns are summarized in Appendix 6.<sup>109</sup>

The SEIS should correct the many failings that make the 2007 SEIS HGM analysis unreliable—including those identified in the 2008 Clean Water Act Final Determination, and use the improved HGM process to conduct a fundamentally new HGM analysis for the SEIS.

- d. *“This HGM analysis considers potential impacts to wetlands that experience  $\geq 14$  days of flood inundation. Recent onsite hydrologic monitoring results demonstrate that wetlands hydrology in the study area is predominantly driven by precipitation, with surface water flood inundation providing supplemental water sources in some*

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<sup>105</sup> Draft Wetlands Analysis at 100.

<sup>106</sup> *Id.* at 100.

<sup>107</sup> *Id.* at 101.

<sup>108</sup> *Id.* at 120.

<sup>109</sup> 2008 Clean Water Act Final Determination at 47. A full analysis of the problems with the Corps’ 2007 HGM analysis are provided in Appendix 6 of the 2008 Clean Water Act Final Determination. This Appendix, along with the entire 2008 Clean Water Act Final Determination, of course must be fully considered in the SEIS and included in the administrative record for the SEIS.



areas during some years (Berkowitz et al. 2019, see Section 4.8 of this report). As a result, the current analysis focuses on wetlands with the potential to be impacted from operation of the pumps (i.e., those supported by flooding). However, available data demonstrates that the wetlands within the project will continue to exhibit wetland hydrology based upon seasonal high water tables derived from precipitation inputs. Thus, conversion of wetlands to non-wetland habitats (i.e., uplands) is not anticipated outside of direct impacts related to the physical project footprint (38 acres)."<sup>110</sup> The Berkowitz study does not support these conclusions, as discussed in detail below; and the many other problems identified in this section strongly suggest that these conclusions are fundamentally incorrect.

- e. *"Notably, the three tiers of wetlands identified during the EMAP study do not reflect the wetlands within the study area subject to potential impacts from operation of the pumps. This is due to the fact that most wetlands within the region are sustained by local patterns of precipitation, with flooding providing supplemental sources of wetland hydrology in some areas (Figure 4.5.1-1). A recent publication (Berkowitz et al. 2019) identifies dominant sources of wetland hydrology in the region, reporting that >75% of wetland saturation events were induced by precipitation and that 87% of study wetlands would persist in the absence of flood water inputs (Figure 4.5.1-2)."*<sup>111</sup> The Berkowitz study does not support these conclusions, as discussed in detail below; and the many other problems identified in this section strongly suggest that these conclusions are fundamentally incorrect.
- f. *"The Holly Bluff Cut-off was completed in 1958, and the Backwater levee was completed in 1978. These flood control features reduced stages in the study area. The median  $\geq 14$  day flood duration elevation threshold was lowered approximately one to three feet as a result of implementing the flood control features, translating to a large aerial decrease in potential wetland areas when superimposed on the project landscape."*<sup>112</sup> If this is accurate, the SEIS must explain why the authorized level of flood protection (as set forth in the 1941 project authorization) has not already been achieved. The SEIS must also ensure that the new stage elevations are used consistently for all analyses in the SEIS, including for determining project benefits.
- g. *"[A] total of 69,465 acres occurring below the  $\geq 14$  day flood duration elevation. This represents the potential wetland area that may be supported by flood inundation, and is the extent utilized throughout the subsequent analysis. These 69,465 acres occurs across several flood duration intervals ranging from 14 to > 35 days (Table 4.5.1-2)."*<sup>113</sup> See the discussion of baseline wetland impacts, above. The many other problems identified in this section also strongly suggest that these conclusions are fundamentally incorrect.

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<sup>110</sup> Id. at 101.

<sup>111</sup> Id. at 102

<sup>112</sup> Id. at 109.

<sup>113</sup> Id. at 109.



- h. *“The flood duration modeling data reports changes in the hydroperiod of potential wetland areas being examined. The majority (75 percent; 51,964 acres) of wetlands are not expected to change flood duration as a result of project implementation (Table 4.5.3-1). A subset of wetlands (24 percent; 16,841 acres) are estimated to display a decrease in flood duration, and a small number of (<0.1 percent; 661 acres) may experience an increase in flood duration.”*<sup>114</sup> See the discussion of baseline wetland impacts, above. The many other problems identified in this section also strongly suggest that these conclusions are fundamentally incorrect.
- i. *“The majority (9,167 acres) of wetlands expected to display a decrease in flood duration will continue to experience  $\geq 14$  days of inundation from floodwaters, although the wetland functional capacity of those wetlands may be decreased. A portion of the wetlands (7,674 acres) estimated to experience a decrease in flood duration will no longer be subject to  $\geq 14$  days of flood inundation. However, available data suggests that this will not result in the conversion of wetlands to non-wetlands (i.e., loss of wetlands; except for the 38 acre physical project footprint) as precipitation-induced wetland hydrology has been shown to significantly exceed the period of flood inundation within the study area across all flood duration intervals (Berkowitz et al. 2019). The changes in flood duration will decrease wetland functional capacities, and those decreases are present for in the wetland functional assessment portion of this report (see below).”*<sup>115</sup> The Berkowitz study does not support these conclusions, as discussed in detail below; and the many other problems identified in this section strongly suggest that these conclusions are fundamentally incorrect.
- j. The draft Wetlands Analysis states that the total acres of agricultural (crop) lands in the updated  $\geq 14$  day flood inundation zone totals 5,206 acres.<sup>116</sup> The draft Wetland Analysis further concludes that only 997 acres of agricultural lands in that zone would be affected by the Yazoo Pumps.<sup>117</sup> If the SEIS relies on these impact numbers, it must limit any assessment of agricultural benefits in this flood inundation zone to 997 acres, and explain how the Corps could carry out the promised reforestation component and required mitigation.
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<sup>114</sup> Id. at 110.

<sup>115</sup> Id. at 111.

<sup>116</sup> Id at 109.

<sup>117</sup> Id. at 121.



- k. *“The HGM assessment of wetland functions applied the same principles, equations, and parameter values utilized in the 2007 report, while updating the extent and distribution of wetlands based upon the best available data.”*<sup>118</sup> It is inappropriate to rely on the 2007 HGM analysis. As the Environmental Protection Agency stated in the 2008 Clean Water Act Final Determination:

EPA believes that certain modeling assumptions and factors used by the Corps in the application of these assessment tools lead to a significant underestimation of the proposed pumping station’s adverse impacts on the aquatic ecosystem, as well as a significant overestimation of the project’s environmental benefits. These concerns are summarized in Appendix 6.<sup>119</sup>

- (14) The SEIS must provide a detailed assessment of: (i) the uncertainties associated with the model, data, and underlying assumptions used to develop its Wetland Analysis; and (ii) the implications of relying on a model that does not (or may not) accurately account for baseline wetlands or impacts to those wetlands.
- (15) The SEIS must provide documentation of the certification for models relied upon in the SEIS, including: (i) “the updated Digital Elevation Model (DEM) which uses a 10-meter resolution”<sup>120</sup>; (ii) the “Flood Event Simulation Model (FESM)” which was used to model baseline conditions<sup>121</sup>; and (iii) any other models used in the SEIS. Corps guidance requires the use of certified models for project planning; a model this is not certified and that has not gone through peer review may not be used for the SEIS.

The Corps’ internal guidance clearly requires certification of the new model before it can be used for planning activities. The purpose of model certification is to ensure, among other things, that models used by the Corps are technically and theoretically sound, computationally accurate, transparent, and in compliance with Corps policy:

**Use of certified or approved models for all planning activities is mandatory.** This policy is applicable to all planning models currently in use, models under development and new models. District commanders are responsible for delivering high quality, objective, defensible, and consistent planning products. Development of these products requires the appropriate use of tested and defensible models. National certification and approval of planning models results in significant efficiencies in the conduct of planning studies and enhances the capability to produce high quality products. The appropriate PCX will be responsible for implementing the model certification/approval process. The goal of certification/approval is to ensure that Corps planning products are theoretically sound, compliant with Corps policy, computationally accurate, based on reasonable assumptions regarding the availability of data, transparent, and described to address any limitations of the model or its use. The use of a

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<sup>118</sup> Id. at 121.

<sup>119</sup> 2008 Clean Water Act Final Determination at 47. For a full analysis of the problems with the Corps’ 2007 HGM analysis see Appendix 6 of the 2008 Clean Water Act Final Determination.

<sup>120</sup> USACE Draft Wetland Analysis at 99, provided at Appendix B to these comments.

<sup>121</sup> Id. at 100.



certified/approved model does not constitute technical review of the planning product. The selection and application of the model and the input data is still the responsibility of the users and is subject to Agency Technical Review and Independent External Peer Review (where applicable). Once a model is certified/approved, the PCXs will be responsible for assuring that model documentation and training on the use of the model are available (either from the PCX or the model developers), and for coordinating with model developers to assure the model reflects current procedures and policies. All certification/approval decisions will be in effect for a period specified by the Model Certification HQ Panel, not to exceed seven years.<sup>122</sup>

Similarly, the use and application of the new model for individual projects is subject to the requirements of the Corps' peer review process.<sup>123</sup>

- (16) The SEIS must ensure appropriate use of the Berkowitz study cited in the Notice of Intent and attached to and relied upon extensively in the draft Wetlands Analysis. The draft Wetlands Analysis draws improper conclusions from the Berkowitz study that taint the entire draft Wetlands Analysis. The Berkowitz study provides little, if any, information that is relevant or useful to the SEIS. It is critical that the SEIS not misuse or overstate the implications of the Berkowitz study.

The Berkowitz study looked at "56 forested wetland study sites throughout the Yazoo Basin" that were chosen "based upon access to public lands, mapped flood frequency and duration (where available), and site condition to include analyses of mature second growth forest and reforested farmed wetlands."<sup>124</sup> Of these sites, **44 were monitored for less than one year**, "from November 2010 until October 2011." Only 12 sites were monitored for more than that extremely limited amount of time: "12 wetland monitoring locations were maintained for three to eight years during the 2011–2018 period" in order "to evaluate trends across multiple years." Based on the extremely limited monitoring at the equally limited and non-representative sample locations, the study provides an even more limited conclusion: "Data suggest that most wetlands examined (87%) would persist in the absence of flooding, and that duration and inundation patterns differed with dominant water source."<sup>125</sup>

These findings do not support, and may not be used to support, any conclusions related to wetland impacts from the Proposed Action for at least the following critical reasons:

- a. As clearly documented in the Berkowitz study, the study is not based on a randomized, statistically valid sample of wetland locations in the project area.

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<sup>122</sup> EC 1105-2-412, Assuring Quality of Planning Models at paragraph 6 (emphasis added).

<sup>123</sup> See, e.g., EC 1105-2-408 and EC-1105-2-410.

<sup>124</sup> Berkowitz, J.F., D.R. Johnson, and J.J. Price, "Forested Wetland Hydrology in a Large Mississippi River Tributary System", *Wetlands Journal* (December 2019) (available at <https://link.springer.com/article/10.1007/s13157-019-01249-5>). While the April 16, 2020 Notice of Intent states that this study is also available on the Yazoo Pumps Backwater Pumps project website, it was not posted to that site as of June 7, 2020.

<sup>125</sup> Id. (emphasis added).



As a result, any findings from the Berkowitz study may not be applied—because they in fact do not apply—to the entire project area. Any attempt to extrapolate the Berkowitz findings to the project area must be rejected.

- b. The Berkowitz study is based on an extremely limited monitoring record that by definition, cannot and does not provide the information needed to draw conclusions regarding the long-term and cumulative implications of the loss of overbank flooding that would occur with the Pumps in place.
- c. The Berkowitz study draws just one extremely limited conclusion that has no meaning in the context of the required NEPA or Clean Water Act reviews, and no meaning in the context of the ecological harm (including loss of ecological services) that would result from construction and operation of the Yazoo Pumps. The Berkowitz study simply concludes that “most wetlands” examined by the study would “persist” in the absence of flooding. Even if this conclusion was correct—which, given the severe limitations of the study, it almost certainly is not—it fails to provide any type of meaningful information.

Saying that a wetland would “persist” means nothing more than that it would continue to exist in some form (presumably, but not necessarily as a jurisdictional wetland). Under that definition, a wetland that pre-Yazoo Pumps would experience inundation of more than a foot for more than 14 consecutive days during key spawning seasons could be deemed to “persist” post-Yazoo Pumps if it lacked any flood-induced inundation but still retained wetland soil characteristics. But under this scenario, the wetland would cease to provide any habitat for fish spawning or any nutrient cycling because wetlands cannot cycle nutrients if the water is not transported off the floodplain, among many other changes. Similarly, if the Yazoo Pumps prevented 20,000 acres of riverine wetlands from receiving at least 7 consecutive days of overbank flooding that would occur without the Pumps, spawning habitat would be completely lost on all of those 20,000 acres even though the wetlands could still persist.

In short, relying on a conclusion that some wetlands would “persist” as providing a rationale for constructing the Yazoo Pumps would constitute a willful refusal to account for the vitally important functions provided by riverine wetlands. Indeed, this is one of the key problems identified in the 2008 Clean Water Act Final Determination that warranted the 2008 veto. The Environmental Protection Agency highlighted the fact that the Yazoo Pumps would cause thousands of acres to “shift from the riverine backwater wetland subclass to the flats wetland subclass (see Table 2).”<sup>126</sup> These changes constituted significant degradation in violation of the Clean Water, notwithstanding the fact that a subclass of wetlands still “persisted.”

- (17) The SEIS must ensure that the same criteria used to assess the geographic extent of wetland impacts (i.e., the new period of record and other data referred to in the Notice of Intent) is also used to assess the geographic extent of flood damage

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<sup>126</sup> 2008 Clean Water Act Final Determination at 50.



reduction benefits. If, as claimed in the draft Wetlands Analysis, the 2007 period of record overestimated wetland impacts, the 2007 period of record would also have overestimated flood damage reduction benefits.

- (18) The SEIS must ensure a comprehensive examination of cumulative wetland losses, including by quantifying and fully accounting for: (i) the historic losses of bottomland hardwood wetlands and other wetlands in the project area and beyond; (ii) the impacts of the project area's massive agricultural withdrawals on the project area wetlands; (iii) the impacts of the severe depletion of groundwater levels in and near the project area on the area's wetlands; and (iv) the impacts of climate change on the project area wetlands. The cumulative impacts of the geographical extent of wetland losses also, of course, must be assessed in connection with the loss of and changes in wetland functions and the ecological impacts of those losses on fish and wildlife including migratory species, amphibians, and reptiles.

Once the SEIS properly assesses the extent of wetland impacts through the analyses discussed above, it must then assess the ecological implications—and significance of those implications—in light of a full understanding of the values provided by the Yazoo Backwater Area wetlands, the implications of the loss of ecological services provided by those wetlands, the full life-cycle needs of the many species that rely on these vital wetlands, and the critical importance of short hydroperiod wetlands for fish and wildlife, among other things.

Many of these factors are discussed in detail in the 2008 Clean Water Act Final Determination and the comments of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, independent scientists, and conservation organizations on the 2008 Clean Water Act Final Determination and the 2007 SEIS. These materials should be carefully reviewed and fully accounted for in the SEIS, and should be included in the administrative record for the SEIS.

As confirmed in the 2008 Clean Water Act Final Determination, the Corps' 2007 HGM analysis process (which, as discussed above, the Corps continues to rely on) is fundamentally flawed and will not properly account for the ecological implications of the Yazoo Pumps-induced wetland losses:

EPA believes that certain modeling assumptions and factors used by the Corps in the application of these assessment tools lead to a significant underestimation of the proposed pumping station's adverse impacts on the aquatic ecosystem, as well as a significant overestimation of the project's environmental benefits. These concerns are summarized in Appendix 6.<sup>127</sup>

As has been repeatedly highlighted by the Federal resource agencies, the area that would be drained by the Yazoo Pumps:

contains some of the richest natural resources in the nation including a highly productive floodplain fishery, one of only a few remaining examples of the bottomland hardwood forest

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<sup>127</sup> 2008 Clean Water Act Final Determination at 47. A full analysis of the problems with the Corps' 2007 HGM analysis are provided in Appendix 6 of the 2008 Clean Water Act Final Determination. This Appendix, along with the entire 2008 Clean Water Act Final Determination, of course must be fully considered in the SEIS and included in the administrative record for the SEIS.



ecosystem which once dominated the Lower Mississippi Alluvial Valley, and is one of only four remaining backwater ecosystems with a hydrological connection with the Mississippi River.”<sup>128</sup> The Yazoo Pumps would cut off the hydrological cycle of backwater flooding that “is critically important to maintenance of project-area wetland and aquatic habitat values, including fisheries production” and that provides the biochemical link to the rest of the lower Mississippi Alluvial Valley ecosystem.<sup>129</sup>

Forested wetlands have long been recognized as vitally important and as being “among the Nation’s most important wetlands.”<sup>130</sup> The bottomland hardwood wetlands of the Lower Mississippi River Valley:

“are prime overwintering grounds for many North American waterfowl, including 2.5 million of the 3 million mallards of the Mississippi Flyway, nearly all of the 4 million wood ducks and many other migratory birds. Numerous finfishes depend on the flooded hardwoods for spawning and nursery grounds. These wetlands support many other species of wildlife, including deer, squirrel, raccoon, mink, beaver, fox and rabbit. They also play a vital role in reducing flooding problems by temporarily storing large quantities of water and by slowing the velocity of flood waters. In the process, these wetlands remove chemicals such as fertilizers and pesticides from the water, trap soil eroding from nearby farmlands, and recharge ground water supplies.”<sup>131</sup>

Notably, in its comments on the 2007 FSEIS, the Department of the Interior concluded that the Yazoo Pumps “will have unacceptable adverse effects on fishery areas, including spawning and breeding areas” and “unacceptable adverse effects on wildlife, specifically to the area’s breeding and migratory birds, including landbirds, shorebirds, wading birds, and waterfowl.”<sup>132</sup> As noted above, many fish species require at least 7 consecutive days of overbank flooding to trigger spawning so that spawning habitat will be completely lost on those wetlands that no longer flood in this manner as a result of the Pumps.

The assessment of the ecological implications of the adverse impacts to wetlands must also account for the full suite of impacts to wetland plants, including the region’s vitally important bottomland hardwood wetland species. As noted above, even small changes in wetland hydrology can cause “massive changes in species composition and richness and in ecosystem productivity.”<sup>133</sup>

The assessment of the ecological implications of the adverse impacts to wetlands must also account for the full suite of ecological services provided by the area’s wetlands. For example, losses to forested and other wetlands resulting from the Yazoo Pumps could, among many other adverse impacts:

- Significantly undermine flood storage, leading to more flooding in the Yazoo Backwater Area since “[w]ooded wetlands in particular increase flood storage, reduced flood peaks and increase peak travel time.”<sup>134</sup>

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<sup>128</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report (October 23, 2006), 2007 Final SEIS, Appendix 3 at 1.

<sup>129</sup> *Id.* at 11.

<sup>130</sup> Report to Congress, Secretary of the Interior, Impact of Federal Programs on Wetlands, 1988, Volume I at 39.

<sup>131</sup> *Id.*

<sup>132</sup> U.S. Department of the Interior Comments on the 2007 FSEIS at 7, 9.

<sup>133</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (5th ed.) (2015) at 112.

<sup>134</sup> Acreman, M.; Holden, J. 2013. How wetlands affect floods. *Wetlands*, 33 (5). 773-786. 10.1007/s13157-013-0473-2.



- Significantly undermine nutrient and sediment removal capabilities since “reconnection of bottomland hardwood wetlands to their surrounding watershed through the restoration of surface hydrology is necessary to restore wetland functions important to nutrient and sediment removal.”<sup>135</sup>
- Further deplete the already significantly depleted groundwater in the Yazoo Backwater Area and the entire Mississippi Delta and further exacerbate the already significant low stream flows in the Yazoo Backwater Area by eliminating large swaths of wetlands that contribute to groundwater recharge and the protection and restoration of stream flow.

Many of these impacts and implications are discussed in more detail below and throughout these comments.

## 2. Impacts to Streams

The SEIS must evaluate the impacts of constructing and operating the Yazoo Pumps on the rivers, streams, and bayous within the Yazoo Backwater Area. As discussed in Section D.5 of these comments, the SEIS also must evaluate the impacts of the Yazoo Pumps on the Yazoo River. The 2007 SEIS did not analyze any of these impacts.

It is beyond question that draining vast areas of wetlands will adversely affect the streams in the Yazoo Backwater Area. Intensifying agricultural production in the Yazoo Backwater Area, which is the fundamental purpose of the Yazoo Pumps use (and accounts for more than 80% of project benefits) will result in increased cultivation, additional fertilizer and pesticide use, and potential land clearing that will all have an adverse effect on the area’s streams.

Stream impacts that must be evaluated include:

- (1) Changes to water temperature;
- (2) Changes to flow, including changes that result from eliminating floodplain wetlands and further reductions in groundwater;
- (3) Change to water quality, including increased sedimentation, nutrient pollution, and toxic contamination; and lower levels of dissolved oxygen (*see* Section D.6 of these comments for more information on required assessments of water quality impacts);
- (4) Changes to the form and function of stream and river channels, which are typically driven by changes in flow patterns, reductions in flow, reduction or loss of natural flood-pulse, and loss of overbank flooding;
- (5) Changes to the floodplain, including particularly to floodplain wetlands; and
- (6) Changes to in-stream and floodplain habitats.

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<sup>135</sup> Hunter, R.G., Faulkner, S.P. & Gibson, K.A. The importance of hydrology in restoration of bottomland hardwood wetland functions. *Wetlands* 28, 605–615 (2008). <https://doi.org/10.1672/07-139.1>.



Impacts to stream resources must be separately evaluated and mitigated, as a matter of law. The SEIS cannot simply ignore the impacts to the project area's vast array of streams.

### 3. Impacts to Conservation Lands

The SEIS must fully evaluate the impacts of the project on conservation lands in the Yazoo Backwater Area and on the wetlands and streams located on those lands. The ecological implications of these impacts—and significance of those implications—must be assessed in light of the significant contribution of these conservation lands to the fish, wildlife, and plant resources in the Yazoo Backwater Area, and throughout the Mississippi River Alluvial Valley.

As noted above, conservation lands in the Yazoo Backwater Area include:

- The Yazoo National Wildlife Refuge Complex, which includes Panther Swamp National Wildlife Refuge, Yazoo National Wildlife Refuge, Holt Collier National Wildlife Refuge, and Theodore Roosevelt National Wildlife Refuge;
- Delta National Forest, which is the only bottomland hardwood forest in the National Forest System;
- Twin Oaks Mitigation Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Mahannah Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Lake George Wildlife Management Area, which provides mitigation for wetland losses caused by previously constructed federal flood control projects;
- Phil Bryant Wildlife Management Area; and
- The extensive acreage enrolled in the Wetland Reserve Easement and Conservation Reserve Programs.

For example, had the Yazoo Pumps been operating in 2019, vast acres of wetlands would have been drained—between 60,000 and 70,000 acres—even as 65% of flooded lands would have remained underwater (including 110,000 acres of cropland). The largest single tract of land that would have been drained is the 8,000-acre Lake George Wildlife Management Area, which as noted above is a Corps mitigation site for previously constructed water resources projects. *See Figure 5, above.*

Collectively, these conservation lands cover 250,000 acres in the Yazoo Backwater Area. *See Figures 3 and 4, above.* The following are the estimated acres in each category of conservation lands in the Yazoo Backwater Area:

Conservation Lands in the Yazoo Backwater Area	
Category	Acres
National Fish and Wildlife Refuges	25,000
National Forest	20,000
State Wildlife Management Areas	118,000
NRCS Easements	50,000
NGO Easements	7,000
Conservation Reserve Program	30,000
<b>Total</b>	<b>250,000</b>



In addition to fully assessing adverse impacts to these conservation lands, it is critical that no agricultural or other flood damage reduction benefits be calculated for conservation and easement lands in the Yazoo Backwater Area. Instead, the value of the ecosystem services lost due to adverse project impacts on these lands must be quantified and accounted for as a project cost in the benefit-cost assessment. It is critical that the SEIS fully inform the public and decision-makers about the adverse impacts that the Yazoo Pumps would cause to the wetlands, streams, and other natural systems on lands and conservation easements that have been purchased, or are being managed, for conservation purposes using federal and state taxpayer dollars.

#### 4. Impacts on Downstream Flooding

The SEIS must carefully assess the impacts of operating the Yazoo Pumps on: increasing flood heights in the Yazoo River; increasing flood risks to homes, businesses, and communities located along or near the Yazoo River; increasing the risk of overtopping or otherwise undermining the integrity of the Yazoo Backwater Levee; and increasing flood heights in the Mississippi River.

A document entitled *Impacts of Yazoo Backwater Pump to Downstream Stages, 22 November 2019*,<sup>136</sup> which was prepared by the Corps, concludes that operating the Pumps in 2019 would have increased flood levels in the Yazoo River (on the riverside of the Steele Bayou Gates) by 0.3 feet. However, because the study has a margin of error of 0.5 feet, the **Corps' study actually shows that flood levels in the Yazoo River could have increased by 0.3 feet to 0.8 feet in 2019 had the Yazoo Pumps been in operation.**<sup>137</sup> This Corps study also concludes that operating the Pumps in 2019 would have increased flood levels at the mouth of the Yazoo River by 0.2 feet. However, **because of the study's margin of error, the increase in flood levels at the mouth of the Yazoo River could be as high as 0.7 feet.**

Based on this Corps analysis, had the Yazoo Pumps been operating in 2019, they would have overtopped the Yazoo Backwater Levee, which according to the Corps had just 0.3 feet of remaining freeboard during the 2019 flood, as demonstrated in this slide from a Mississippi Valley Division presentation on the 2019 Mississippi River flood. See Figure 10, below.

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<sup>136</sup> This document is posted on the Delta Council website at <https://www.deltacouncil.org/corpsimpactstudy.html> (last visited June 8, 2020).

<sup>137</sup> USACE, *Impacts of Yazoo Backwater Pump to Downstream Stages, 22 November 2019* at 1 (Model tolerance for the MR&T flowline assessment HEC-RAS model is approximately plus or minus 0.5 ft.)



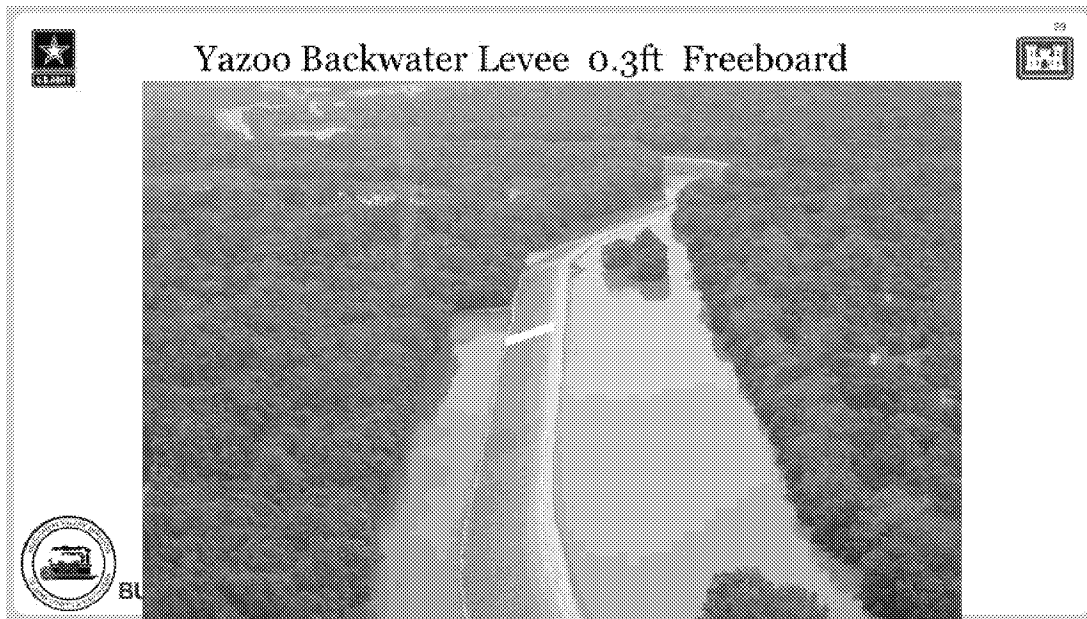


Figure 10, Yazoo Backwater Levee Remaining Freeboard 2019 Flood (0.3ft) (Source: USACE Mississippi Valley Division Presentation on 2019 Mississippi River Flood, Joey Windham, Chief Watershed Division)

The portion of the Yazoo Backwater Levee that could be directly impacted by the Yazoo Pumps (that portion located south of Belzoni, MS) consists of “approximately 28 miles of earthen embankment.” This portion of the Yazoo Backwater Levee (which is not accredited by the Federal Emergency Management Agency) has a moderate risk with **overtopping with breach the primary risk driver**, according to the National Levee Database.<sup>138</sup> Moderate risk is defined as follows: “Likelihood of inundation due to breach and/or system component malfunction in combination with loss of life, economic, or environmental consequences results in moderate risk.”<sup>139</sup>

As reported by the Mississippi Business Journal in 2012, this section of the Yazoo Backwater Levee must be “raised slightly more than 1.5 feet, according to Ken Parrish, Army Corps of Engineers’ senior project manager for the mainline Mississippi River levee.”<sup>140</sup> The article also states that “Federal officials say the recent flooding showed the 27-mile long flood protection berm must be raised more than a foot-and-a-half to provide its intended protection. The levee must have three to five feet of “free board,” according to the U.S. Army Corps of Engineers. This is the water-free mark from the highest level of a 100-year-flood to the top of the levee. The spring flood led to a recalculation of the 100-year flood mark and the beginning of the de-certification fears.”<sup>141</sup>

The Corps recommends supporting “**risk reduction actions as a priority**” for levees at moderate risk:

<sup>138</sup> National Levee Database at <https://levees.sec.usace.army.mil/#/levees/system/5905000041/summary> (visited June 8, 2020) (emphasis added).

<sup>139</sup> USACE, EC 1165-2-218, APPENDIX D Levee Safety Action Classification (LSAC) Table, <https://www.mvn.usace.army.mil/Portals/56/docs/PAO/LSACs/LSAC%20Table.pdf> (visited June 8, 2020).

<sup>140</sup> Ted Carter, Army Corps of Engineers: Backwater levees must be raised or face de-certification, Mississippi Business Journal, May 17, 2012 (available at <https://msbusiness.com/2012/05/army-corps-of-engineers-backwater-levees-must-be-raised-or-face-de-certification/>).

<sup>141</sup> Id.



Based on risk drivers, implement interim risk reduction measures as appropriate. Verify risk information is current and implement routine monitoring program; assure O&M is up to date; communicate risk characteristics to the community in a timely manner; verify emergency plans and flood inundation maps are current; ensure community is aware of flood warning and evacuation procedures; and, recommend purchase of flood insurance. **Support risk reduction actions as a priority.**<sup>142</sup>

Operation of the Yazoo Pumps would increase—not reduce—risks to the integrity of the Yazoo Backwater Levee by increasing flood heights in the Yazoo River and by pumping water into the Yazoo River at high velocity. Increased flood heights in the Yazoo River would also affect Vicksburg communities and business located along the Yazoo River. Because of the new Deer Creek location, increased flood heights in the Yazoo River caused by the Yazoo Pumps would also create a significant risk of inundating the International Paper wastewater treatment ponds and releasing significant amounts of toxic wastewater into the Yazoo River. See Section D.5 and Figure 11, below.

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<sup>142</sup> USACE, EC 1165-2-218, APPENDIX D Levee Safety Action Classification (LSAC) Table, <https://www.mvn.usace.army.mil/Portals/56/docs/PAO/LSACs/LSAC%20Table.pdf> (visited June 8, 2020).Id.



## 5. Impacts of Siting the Yazoo Pumps at the Deer Creek Location

The SEIS must fully evaluate the impacts associated with moving the location of the Pumps to the Deer Creek Location (see Figure 11, below).

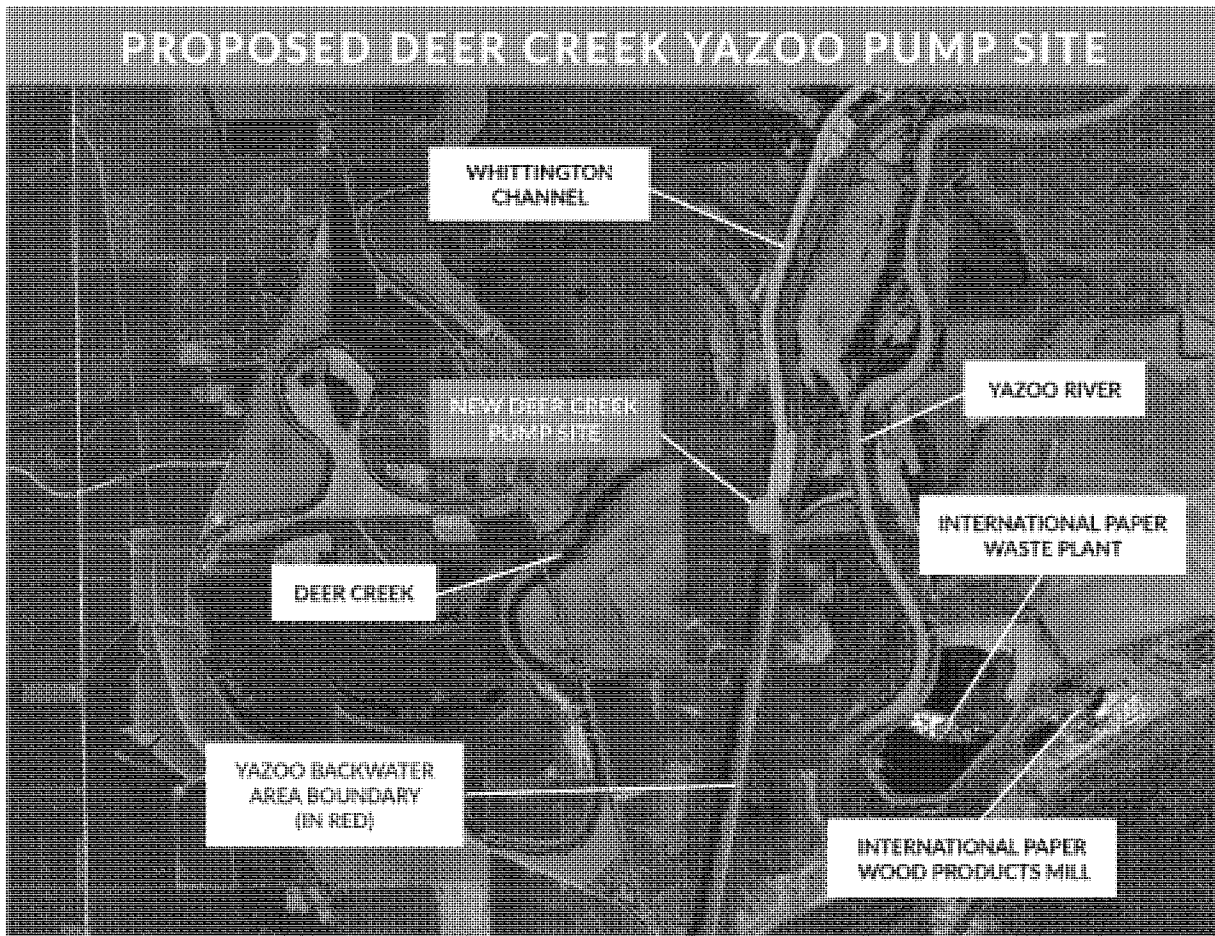


Figure 11, Proposed Deer Creek Yazoo Pumps Site Location (Source: Google Maps)

The new location raises the specter of numerous additional significant impacts that were never considered in the 2007 SEIS. To ensure a proper evaluation of these impacts, the SEIS must assess and quantify at least the following:

- (1) The SEIS must examine the impacts associated with channel clearing, channel enlargement, channel stabilization, and any other actions needed to ensure that Deer Creek will be able to support the pressure and flow associated with operating the Yazoo Pumps.
- (2) The SEIS must examine the impacts resulting from constructing the inlet and outlet channels and other required infrastructure at the Deer Creek location.
- (3) The SEIS must examine the impacts of constructing and operating the Yazoo Pumps at the Deer Creek location on the stability and integrity of the Yazoo Backwater Levee.



- (4) The SEIS must provide a detailed operating plan for the Yazoo Pumps at the Deer Creek location, and examine the impacts of the project in light of the inherent flexibility of Corps operating plans. For example, the operating plan presented in the 2007 SEIS states that the Pumps can be turned on whenever water levels are “predicted” to reach 87 feet, which could allow initiation of pumping when water levels are already extremely low. Notably, the public has no way of tracking the exact time or elevations when pumping is initiated.

Moreover, any pumping regime adopted by the Corps can, and certainly will, change. The Corps has the authority to make changes to the operating regime, and the pressure to do so will be significant. The Corps has a long history of changing operations in a way that harms the environment and public safety. For example, over time, the Corps has changed the operating plan for the New Madrid Floodway (which provides a natural area for the Mississippi River to spread out onto its historic floodplain) by raising the activation level from 58 feet to 60 feet and finally to 61.72 feet in 2011 (see Figure 12, below).

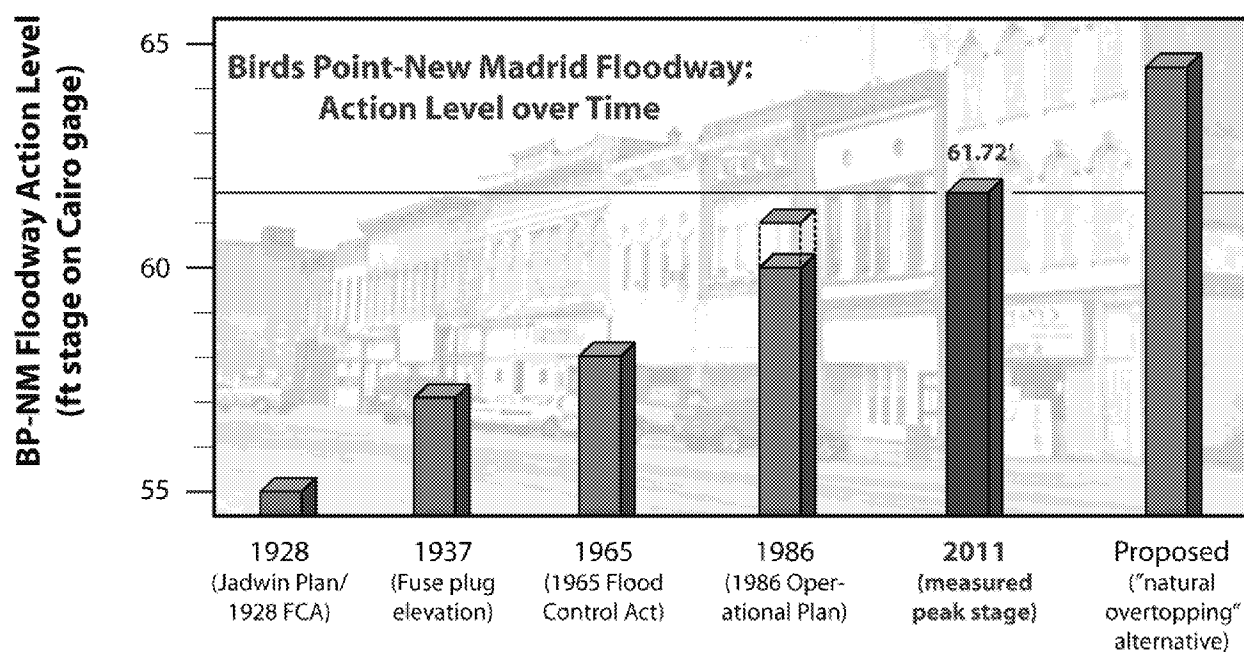


Figure 12, Example of Fundamental Operating Plan Changes—New Madrid Floodway (Courtesy of Nicholas Pinter, Ph.D., Southern Illinois University)

The New Madrid Floodway operational changes have happened “officially” and unofficially. A 1986 Operating Plan “officially” changed the activation level to trigger use of the floodway when water levels were predicted to reach 61 feet.<sup>143</sup> However, during the flood of 2011, the Corps did not follow that operating plan, but instead waited to activate the floodway until the river reached 61.72 feet at Cairo, far above either the authorized activation level or the 1986 activation level. The delay in activating the floodway resulted in extensive

<sup>143</sup> Camillo, Charles A., "Divine Providence: The 2011 Flood in the Mississippi River and Tributaries Project" (2012). US Army Corps of Engineers, Omaha District. Paper 142 at 57, available at <http://digitalcommons.unl.edu/usarmyceomaha/142> (visited on December 18, 2016).



flooding. More than 200 structures flooded in Olive Branch, Illinois. Almost 240 homes were flooded in the City of Metropolis Illinois and dozens of businesses were either closed or greatly affected by high water. Lost revenue, flood fighting and clean-up costs from the 2011 flood cost Metropolis almost \$1.4 million.<sup>144</sup> The entire city of Cairo Illinois was put under a mandatory evacuation order. Residents were forced to leave their homes and find alternative places to stay, often at significant personal expense. Cairo could have been completely destroyed by any further delay. Once the floodway was used, water levels at Cairo dropped 1 foot in just 6 hours, and 2.7 feet in just 48 hours.

- (5) The SEIS must examine whether locating the Yazoo Pumps at the Deer Creek location will allow (and thus, likely lead to) operating the Yazoo Pumps when the Steele Bayou gates are open. If this is the case, the adverse impacts to wetland from the Yazoo Pumps could be significantly greater since pumping could happen much more frequently. Locating the Yazoo Pumps at Steele Bayou creates a fundamental structural limitation on pumping operations. According to the 2007 SEIS, if the Pumps are located at Steele Bayou they cannot be operated when the Steele Bayou gates are open because the large flow of water would through the open gates would overwhelm the pump mechanism.
- (6) The SEIS must examine whether operating the Yazoo Pumps at the Deer Creek location will cause additional or more intense harm to the Deer Creek watershed due to the much smaller drainage area of that watershed. According to Corps documents, Deer Creek drains just 200 square miles. By contrast, Steele Bayou drains 752 square miles, the Big Sunflower River drains 2,832 square miles, and the Little Sunflower drains 309 square miles.
- (7) The SEIS must examine whether operating the Yazoo Pumps at the Deer Creek location will cause additional or more intense harm to Delta National Forest (which is managed as a bottomland hardwood wetland ecosystem) and other nearby conservation lands. Moving the Pumps to the Deer Creek location places the Pumps much closer to Delta National Forest and other conservation lands than the Steele Bayou location.
- (8) The SEIS must examine whether discharging the Yazoo Pumps into the Yazoo River at the Deer Creek location will cause additional, more intense, or different harm to the Yazoo River and its floodplain. Of particular note, the Deer Creek location is just upstream of an International Paper Plant and the plant's industrial wastewater treatment facility and ponds which are directly adjacent to the Yazoo River (see Section D.5 and Figure 11, above). Discharging water into the Yazoo River at this location creates a significant risk of inundating the wastewater treatment ponds and releasing significant amounts of toxic wastewater into the Yazoo River.
- (9) The SEIS must examine the impacts of construction and operation of any power generation facilities at the site, and the impacts to air quality from operations, including any increase in compounds that will contribute to climate change.
- (10) As discussed in detail in Section F.2 of these comments, the SEIS must examine whether locating the Yazoo Pumps at the Deer Creek location results in the loss of the non-federal cost share waiver implemented in 1997.

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<sup>144</sup> July 26, 2016 Letter to President Obama from Billy McDaniel, Mayor of the City of Metropolis Illinois.



## 6. Impacts to Water Quality

The SEIS must demonstrate that the Yazoo Pumps will not cause or contribute to violations of state water quality standards, as required by the Clean Water Act.

The Corps may not permit the discharge of dredge and fill material for a project if it causes or contributes to violations of any applicable State water quality standard.<sup>145</sup> This prohibition is especially relevant as the Yazoo Backwater Area already suffers from degraded water quality due to pollutants such as sediment, pesticides, and excessive nutrients. As a result, the area includes an extensive list of section 303(d) impaired waters, some of which are subject to strict Total Maximum Daily Loads (TMDL). A list of these TMDLs are provided at Attachment C to these comments. Furthermore, Mississippi's anti-degradation standards protects all of the natural streams and wetlands in the area.<sup>146</sup>

The Yazoo Pumps would, however, exacerbate pollution levels in this area, leading to exceedances of state water quality standards. Among other impacts, the proposed project would (1) increase sediment and pesticide levels in Deer Creek, (2) degrade or destroy thousands of acres of wetlands that play a crucial role in protecting water quality, and (3) increase agricultural production and the use of fertilizers and pesticides. The net result could trigger exceedances of state water quality standards, precluding the Corps' ability to comply with Clean Water Act section 404, unless the Corps proves there is "sufficient information" to conclude otherwise.<sup>147</sup> The Corps must therefore prepare an SEIS that comprehensively analyze the impacts of the project on water quality, including the significant new information regarding water quality in the area.<sup>148</sup>

### (1) Water Quality Standards in the Yazoo Backwater Area

The Yazoo Backwater Area contains a network of streams and channels that ultimately connect through the Yazoo River to the Mississippi River near Vicksburg. Most stream flow in the Yazoo River originates in the uplands along the eastern flank of the basin and is carried to the Yazoo River via the Coldwater, Yokona, Tallahatchie, and Yalobusha Rivers, and several smaller streams. Interior drainage is provided by numerous small streams that discharge to Deer Creek, the Big Sunflower River, or Bogue Phalia, all of which flow to the lower Yazoo River.

The Yazoo Backwater Area is an incredibly productive fishery, as highlighted by the U.S. Fish and Wildlife Service:

The Yazoo system is an incredibly productive fishery for catfishes (flathead, blue and channel cats) and catostomids (primarily buffalofishes – a principal group exploited by subsistence and artisanal fishers). Blue sucker stocks are also fairly strong and dynamic (this is a fish that is not

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<sup>145</sup> See 40 C.F.R. § 230.10(b); see also *id.* § 131.21(d) (stating that state water quality standards must be used in "evaluating proposed discharges of dredged or fill material under section 404").

<sup>146</sup> 11 Code Miss. R. Pt. 6, R. 2.1.

<sup>147</sup> See 40 C.F.R. § 230.12(a)(3)(iv).

<sup>148</sup> See 40 C.F.R. § 1502.9(c)(1) (requiring agencies to evaluate and disclose environmental consequences of "new circumstances or information" that are significant and which have not been previously the subject of an original EIS).



doing well in other parts of its range, but holding its own in the Yazoo system).<sup>149</sup>

The Service documented dozens of additional backwater fish that depend upon the Yazoo Backwater Area's river floodplains and ecosystems.<sup>150</sup>

As such, Mississippi classifies all of the natural streams and waters in the Yazoo Backwater Area as "Fish and Wildlife" waters, ensuring their protection under the state's anti-degradation policy.<sup>151</sup> Fish and Wildlife waters "are intended for fishing and for propagation of fish, aquatic life, and wildlife. Waters that meet the Fish and Wildlife Criteria shall also be suitable for secondary contact recreation. Secondary contact recreation is defined as incidental contact with the water during activities such as wading, fishing, and boating, that are not likely to result in full body immersion."<sup>152</sup> Mississippi's anti-degradation policy states that "[i]n no event . . . may degradation of water quality interfere with or become injurious to existing instream water uses."<sup>153</sup>

The Yazoo Backwater Area, however, suffers from degraded water quality due to the impacts of agricultural past practices prevalent in the Mississippi Delta. In 2005, the state reported that overall water quality was lower in this area than anywhere else in the state, as evidenced by a region-wide advisory regarding fish consumption, and numerous consumption bans in some area waters because of high pesticide levels. EPA also documented the extensive list of 303(d)-impaired water bodies in the Area in 2007 due to pollutants such as sediment, pesticides, and excessive nutrients.<sup>154</sup> As a result, numerous waterbodies are subject to TMDLs with little or no margin for additional pollution. See Attachment C.

The Corps acknowledged in the 2007 SEIS its obligation to analyze the TMDL and Section 303(d) list waters "because Mississippi's most recent edition of its water quality criteria states that these waters shall not be further impaired for any designated use."<sup>155</sup> Since then, the Mississippi Department of Environmental Quality (MDEQ) has completed numerous additional TMDLs for streams and rivers in the Yazoo Backwater Area, including the following TMDLs:

- Organic Enrichment / Low Dissolved Oxygen (DO) for Swiftwater Bayou Watershed (February 2014)
- Total Nitrogen and Total Phosphorus For Silver Creek (June 2008)
- Total Nitrogen and Total Phosphorus For Jaynes Bayou (June 2008)
- Total Nitrogen and Total Phosphorus For Lake Jackson (June 2008)
- Total Nitrogen and Total Phosphorus For Cypress Lake (June 2008)
- Total Nitrogen and Total Phosphorus For Selected Large Rivers in the Delta (June 2008)
- Yazoo River Basin Designated Oxbow Lakes for Sediment (April 2008)

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<sup>149</sup> U.S. Fish and Wildlife Service, Fish and Wildlife Resources Associated with the Yazoo Backwater Area Certain Life History Aspects, Ecological Relationships, and Effects Anticipated as a Result of Reduced Flooding (June 11, 2018), at 15.

<sup>150</sup> Id. at 18, Table 2.

<sup>151</sup> See <https://www.mdeq.ms.gov/wp-content/uploads/2007/10/yzmap&tablewqsadptaug07.pdf> (Map depicting Yazoo River Basin Water Quality Standards)

<sup>152</sup> 11 Code Miss. R. Pt. 6, R. 2.3.

<sup>153</sup> 11 Code Miss. R. Pt. 6, R. 2.1.

<sup>154</sup> See 2008 Clean Water Act Final Determination, Appendix 7.

<sup>155</sup> 2007 EIS, Appx. 16 ¶235.



- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For the False River (April 2008)
- Yazoo River Basin Delta Region for Impairment Due to Sediment (April 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Deer Creek (June 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Snake Creek (June 2008)
- Total Nitrogen, Total Phosphorus, and Organic Enrichment / Low Dissolved Oxygen For Collins Creek (June 2008)

These TMDLs contain significant new information regarding environmental conditions and water quality requirements in the Yazoo Backwater Area, triggering the Corps' obligation to prepare an SEIS and evaluates whether the proposed project complies with state water quality standards, including these newly issued TMDLs.<sup>156</sup>

## (2) The Proposed Project Will Increase Sediment and Pesticide Levels in Deer Creek

The Yazoo Backwater Area suffers from elevated levels of legacy pesticides, including DDT and Toxaphene. As documented by MDEQ, these contaminants have year-round impacts on aquatic species and public health, requiring closure of fishing in the Yazoo backwater Area, including the Yazoo National Wildlife Refuge.<sup>157</sup> MDEQ has also issued fish consumption advisories due to the elevated concentrations of these pesticides in fish tissue.<sup>158</sup> To prevent any further impairment of the watershed or existing uses, MDEQ imposed a TMDL for these pesticides in 2005, which contains no margin for safety due to the severity of these pollutants.<sup>159</sup>

The proposed construction of the Yazoo Pumps in Deer Creek would mobilize legacy pesticides in the soil, potentially violating the TMDL and causing impermissible degradation of waterbodies. As shown by the Corps' soil samples, Deer Creek contains DDT, DDD, DDE, and Dieldrin at levels that exceed the threshold effect and probable effect levels imposed by EPA to protect public health.<sup>160</sup> Deer Creek also contains levels of arsenic, copper, lead, mercury, nickel and zinc that exceed EPA's threshold effect levels.<sup>161</sup> The proposed project would periodically remove sediment in Deer Creek, releasing these pollutants, violating the TMDL (which contains no allowance for increased levels in pollutants), and impairing the ability of the creek to support "Fish and Wildlife" uses.

Yet, the Corps has never analyzed the impacts of these construction activities on state water quality standards, despite the obligation to do so under NEPA and the 404(b)(1) Guidelines.<sup>162</sup> In the 2007 SEIS, the Corps focused solely on construction activities at the Steele Bayou gates, claiming there were no contaminated soils in the area.<sup>163</sup> That assertion does not apply to the newly proposed location at Deer Creek, as demonstrated by the Corps' own soil data. The Corps must therefore prepare an SEIS to

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<sup>156</sup> See 40 C.F.R. § 1502.9(c)(1).

<sup>157</sup> See MDEQ, Yazoo River Basin Legacy Pesticide TMDL (Nov. 2005), at 14.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 17.

<sup>160</sup> 2007 EIS Appx. 16 at Table 16-5a.

<sup>161</sup> *Id.* at Table 16-6.

<sup>162</sup> See 40 C.F.R. § 230.10(b).

<sup>163</sup> See 2007 EIS Appx. 16 ¶230.



evaluate these water quality impacts and demonstrate that the proposed project will not cause or contribute exceedances of state water quality standards.

### **(3) The Proposed Project Will Destroy Wetlands, Impairing Water Quality Throughout the Yazoo Backwater Area**

Wetlands perform a series of critical functions that reduce the excessive levels of pollutants in the Yazoo Backwater Area. As documented by EPA,

wetlands permanently remove or temporarily immobilize elements and compounds that are imported to the wetland from various sources, but primarily via the flood cycle. Elements include macronutrients essential to plant growth (e.g., nitrogen, phosphorus, and potassium) as well as heavy metals (zinc, chromium, etc.) that can be toxic at high concentrations. Compounds include pesticides and other imported materials. The primary benefit of this function is that the removal and sequestration of elements and compounds by wetlands reduces the load of nutrients, heavy metals, pesticides, and other pollutants in rivers and streams.<sup>164</sup>

Despite this critical pollutant-filtering role, the 2007 FSEIS arbitrarily and inappropriately excluded consideration of wetlands in the 5-year floodplain and of wetlands that receive less than 14 consecutive days of flooding (often referred to as “short-hydroperiod wetlands”).<sup>165</sup> As a result of these arbitrary limits, the 2007 FSEIS completely excluded consideration of impacts to at least 24,000 acres of wetlands in the 2-year floodplain and to all wetlands located outside the 2-year floodplain, as recognized in the 2008 Clean Water Act Final Determination:

EPA’s concerns regarding this proposed project are amplified because we believe the spatial extent of wetlands potentially impacted by the proposed project is much greater than that estimated in the FSEIS. As discussed in Appendix 5, EPA’s Environmental Monitoring and Assessment Program (EMAP) analysis identified approximately 52,000 acres of wetlands which are located on the 2-year floodplain but outside of the wetland assessment area established in the FSEIS (Figure 5). EPA believes that as much as 24,000 acres of these 52,000 acres of wetlands are connected to backwater flooding and will be adversely impacted by the project to an even greater degree than the wetlands considered in the FSEIS. However, the FSEIS did not evaluate impacts to these wetlands.<sup>166</sup>

The 2007 FSEIS also acknowledged that if it had calculated impacts based on the “upper 90 percent confidence” range, it would have concluded that operation of the Yazoo Pumps would affect 95,200 acres of wetlands, with 44,600 acres of wetlands becoming non-jurisdictional and an additional 50,600 acres of wetlands suffering changes in the duration of inundation.<sup>167</sup>

Due to this gross underestimate of wetlands impacts, the Corps failed to recognize that the destruction and degradation of these wetlands would contribute to violations of state water quality standards, as documented by EPA. The 2008 Clean Water Act Final Determination states:

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<sup>164</sup> EPA Veto at 30.

<sup>165</sup> FSEIS Main Report at 141.

<sup>166</sup> EPA Veto at 45.

<sup>167</sup> FSEIS Main Report at 142.



In the 24,000 acres of wetlands occurring in the 2-year floodplain that were not evaluated in the FSEIS, the pollutant removal functions would be lost completely since flooding would be reduced to a point (i.e., 10 year return) where floodwaters no longer access the wetlands on a regular basis. Without regular input of the elements and compounds by floods, these normally riverine wetlands would convert to flat wetlands and would no longer perform this particular function. Given that the Yazoo Backwater Area already contains CWA section 303(d)-listed impaired waterbodies (see Appendix 7), the extensive loss of pollutant filtering and removal functions by wetlands impacted by the proposed project could exacerbate the elevated concentrations of the pollutants of concern, potentially causing or contributing to violations of applicable state water quality standards (40 CFR 230.10(b)).<sup>168</sup>

The Corps has an obligation to prepare an SEIS to evaluate these significant impacts, which it entirely overlooked in 2007, and ensure the project does not violate state water quality standards, as predicted by EPA.

#### **(4) The Proposed Project Will Increase Agricultural Production and Associated Pollution**

By draining the Yazoo backwater Area, the Yazoo Pumps would convert normally riverine wetlands into flat wetlands free from periodic flooding. This conversion would eliminate the pollutant filtering capacity of these lands, all while encouraging agricultural production and the associated use of pesticides. The net result would be unavoidable degradation of water quality, as made clear by Dr. R. Eugene Turner, one of the nation's preeminent wetland scientists. In his comments on EPA's veto, he clearly explained the consequences for water quality:

When drained there will be substantial changes to the soils which will encourage agricultural development and this development will use fertilizers. The fertilizers will leak from the system sooner or later. Water quality compromises are, therefore, unavoidable. Several studies, for example, have demonstrated a positive linear relationships between soil P and P in runoff (Sharpley 1995; Pote et al. 1996; Davis et al. 2005).

The net result is a loss in nutrient uptake/transformation, and an increase in the nutrient loading from agricultural uses of fertilizer and the 'mining' of nutrients stored in vegetation and soils (Turner and Rabalais 2003).<sup>169</sup>

The Corps must analyze whether the "net result" of the Pumps—the loss of wetland capacity coupled with increased agricultural production—would impermissibly degrade waterways in the backwater area or exceeded TMDLs. For example, in 2006, MDEQ listed numerous rivers in the Yazoo backwater Area as impaired for nutrients (total phosphorous and nitrogen), including Steele Bayou and the Yazoo River.<sup>170</sup> Though the TMDL only set limits for point-sources, it acknowledged the need to assess whether these

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<sup>168</sup> EPA Veto at 52.

<sup>169</sup> Comments of Dr. R. Eugene Turner submitted to the EPA docket on the Yazoo Pumps veto on April 23, 2008. Full citations to the studies referred to in this quotation are included in Dr. Turner's comments.

<sup>170</sup> See TMDL Total Nitrogen and Total Phosphorus For Selected Large Rivers in the Delta (June 2008), at 4 (available at [https://www.mdeg.ms.gov/wp-content/uploads/TMDLs/Yazoo/Delta\\_Large\\_Rivers\\_FINAL\\_Nutrients\\_TMDL\\_35411.pdf](https://www.mdeg.ms.gov/wp-content/uploads/TMDLs/Yazoo/Delta_Large_Rivers_FINAL_Nutrients_TMDL_35411.pdf)).



standards were sufficient, given nutrient loadings from the non-point sources, including agricultural cropland.<sup>171</sup> Given the impairment of waterways due to nutrients, the Corps must demonstrate the proposed project will not cause exceedances of existing TMDLs or otherwise degrade water quality and impair existing uses.

The Corps also has an obligation to analyze impacts of increased nutrient loadings on downstream waters, including the Gulf of Mexico.<sup>172</sup> Each summer, an extensive area of hypoxia forms in the Gulf of Mexico as a result of high nutrients in the Mississippi and Atchafalaya Rivers. The Yazoo River basin is a significant cause of the problem due to its proximity to the Gulf and intensive agricultural operations.<sup>173</sup> The proposed project would exacerbate this problem, requiring a thorough SEIS to ensure that the Yazoo Backwater Area pollution problems are not causing water quality violations downstream.

## 7. Impacts to Groundwater

The SEIS must fully evaluate the impacts of the project on groundwater, and the cascading impact to the Yazoo Backwater Area's rich natural resources. Irrigation in the Mississippi Delta, including the Yazoo Backwater Area, has caused some of the most severe groundwater declines in the United States and highly damaging low-flow conditions in many Delta streams.

Farms in the Mississippi Delta withdraw an estimated 9 billion gallons of groundwater per day for irrigation from the upper-most aquifer underlying the Mississippi Alluvial Plain. This aquifer is the third largest provider of groundwater in the United States, according to the U.S. Geological Survey. USGS studies show that groundwater levels in parts of the region have dropped more than 100 feet since 1870. This is among the most significant declines of groundwater levels of any region in the United States. Computer models suggest that these significant declines will expand in the coming decades. Groundwater declines and resulting low-flow conditions in many Delta streams are contemporaneous with increases in irrigation, according to the USGS. Low flows in streams threaten fish, mussels and other aquatic life. Low flows also impair water quality and threaten the ability of streams to assimilate wastewater discharges. Government agencies are investing millions of dollars to characterize groundwater declines in the region and implement conservation measures.<sup>174</sup>

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<sup>171</sup> *Id.* at 22.

<sup>172</sup> See *Riverside Irrigation District v. Andrews*, 758 F.2d 508, 511–12 (10th Cir. 1985) (requiring Corps to analyze the secondary effects of a proposed project on downstream waters).

<sup>173</sup> In 1996, the Yazoo River Basin alone contributed at least 5.7% of phosphorous loads, 2.7% of nitrogen loads, and 1% of the nitrogen load in the Gulf. See Coupe, R.H., Concentrations and Loads of Nitrogen and Phosphorous in the Yazoo River, Northwestern Mississippi, 1996-97 (available at [https://www.nal.usda.gov/download/44722/PDF](#)); see also F. Douglas Shields Jr., et al., Nitrogen and Phosphorous Levels in the Yazoo River Basin, Mississippi, *Ecohydrology* (2009) (available at <https://nal.usda.gov/download/44722/PDF>).

<sup>174</sup> Killian, C.D., Asquith, W.H., Barlow, J.R.B. et al. Characterizing groundwater and surface-water interaction using hydrograph-separation techniques and groundwater-level data throughout the Mississippi Delta, USA. *Hydrogeol J* 27, 2167–2179 (2019) (available at <https://doi.org/10.1007/s10040-019-01981-6>); 2019 Mississippi Water Resources Conference Proceedings (available at [https://www.wrri.msstate.edu/pdf/2019\\_wrri\\_proceedings.pdf](https://www.wrri.msstate.edu/pdf/2019_wrri_proceedings.pdf)); M.L. Reba, J.H. Massey, M.A. Adviento-Borbe, D. Leslie, M.A. Yaeger, M. Anders, and J. Farris, *Aquifer Depletion in the Lower Mississippi River Basin: Challenges and Solutions*, Universities Council on Water Resources Journal of Contemporary Water Research & Education Issue 162, Pages 128-139, December 2017 (available at <https://onlinelibrary.wiley.com/doi/pdfdirect/10.1111/j.1936-704X.2017.03264.x?download=true>); 2014. Mississippi Executive Order 1341 (establishment of the Governor's Delta Sustainable Water Resources Task Force, signed by Gov. Phil Bryant, April 26, 2014) (<https://www.mdeq.ms.gov/wp-content/uploads/2018/11/View->



Recent studies demonstrate the significant value of wetlands to groundwater recharge in the Yazoo Backwater Area,<sup>175</sup> strongly suggesting that wetland losses caused by the Yazoo Pumps will exacerbate the area's already significant groundwater declines. The likelihood of increased irrigation to facilitate the Yazoo Pumps-induced agricultural intensification, will cause additional groundwater declines in the Yazoo Backwater Area. These declines in turn, will harm the area's remaining wetlands and exacerbate the area's already significant low flow problems (since groundwater provides some base flow in the Yazoo Backwater Area rivers, streams, and bayous).

The implications of Yazoo Pumps-induced groundwater declines will not stop at the borders of the Yazoo Backwater Area. To the contrary, such declines will affect all areas that rely on the upper-most aquifer underlying the Mississippi Alluvial Plain.

## 8. Impacts to Fish and Wildlife, Including Listed Species

The SEIS must examine the direct, indirect, and cumulative impacts of the Yazoo Pumps and alternatives on the full array of species that rely on the Yazoo Backwater Area, including fish, waterfowl, birds, mammals, reptiles, amphibians, and mussels. Close attention must be paid to at-risk species, including species listed under the Endangered Species Act, and the SEIS must comply with the consultation and other requirements of the Endangered Species Act.

The ecologically rich wetlands in the Yazoo Backwater Area provide vital habitat to an astounding array of more than 450 species of birds, fish and wildlife. Located in the heart of the Mississippi River flyway, the Yazoo Backwater Area is vitally important to migratory species. Sixty percent of all North American birds and 40% of North America's waterfowl migrate through the Mississippi River flyway.

The Yazoo Backwater Area is also home to a number of at-risk species and species of special concern, including species designed as threatened or endangered under the Federal Endangered Species Act after the 2007 SEIS was completed. The impacts to all at-risk and species of concern must be fully evaluated in the SEIS. As noted above, the SEIS also must comply with the consultation and other requirements of the Endangered Species Act.

It is beyond dispute that a loss of wetlands and natural flood pulses in the Yazoo Backwater Area will cause adverse impacts to wildlife. For example:

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[Executive-Order-1341.pdf](#)); Mississippi Water Resources Research Institute, Mississippi State University (available at <https://www.wrri.msstate.edu/>); 38th Annual Mississippi Water Resources Research Conference, Session A panel discussion proceedings (available at <https://www.wrri.msstate.edu/pdf/sessionA.pdf>); 2018 annual report. Mississippi Water Resources Research Institute, Mississippi State University (available at <https://www.wrri.msstate.edu/pdf/2018annual.pdf>); Proceedings of the 37<sup>th</sup> annual Mississippi Water Resources Conference. Agricultural Water Use in the Mississippi Delta, Shane Powers, Yazoo Mississippi Delta Joint Water Management District (available at <https://www.wrri.msstate.edu/pdf/powers07.pdf>).

<sup>175</sup> Ying Ouyanga, et al., *Estimating impact of forest land on groundwater recharge in a humid subtropical watershed of the Lower Mississippi River Alluvial Valley*, Journal of Hydrology: Regional Studies 26 (2019) 100631 (wetlands in the lower Yazoo River Basin provide the highest rates of groundwater recharge while agricultural lands provide the lowest rates). Michael Gratzer, et al., *Quantifying Recharge to the Mississippi River, Valley Alluvial Aquifer from Oxbow Lake-Wetland Systems*, (2017) (oxbow lake wetlands near Belzoni, MS produce "significant vertical recharge" into the Mississippi River Valley Alluvial Aquifer). A copy of Journal of Hydrology study is provided at Attachment D to these comments.



“Disruption of lateral connectivity and the flood pulse can affect both aquatic and non-aquatic organisms, as well as nutrient processing, and other floodplain functions (Cobb et al. 1993, Lytle and Poff 2006 and references therein). For example, productivity of songbirds and waterfowl can be affected because of the influence of the flood pulse on predators and food availability (Heitmeyer 2006, Hoover 2006, Cooper et al. 2009, Hoover 2009). Furthermore, channelization and dams can alter the timing, depth, duration, and frequency of floods and disrupt synchronized linkages between the flood pulse and life history processes of organisms (Richter et al. 1997, Bunn and Arthington 2002, Heitmeyer 2006, Hupp et al. 2009).

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Floodplain forests historically provided a variety of habitats for breeding amphibians, secretive marsh birds, and wintering and breeding waterfowl. Furthermore, the diversity of hydroperiods resulted in abundant aquatic invertebrate populations and high seed production by moist-soil plants. These food and structural resources are critical for fulfilling wintering, breeding, and migrating waterfowl and shorebird needs; however, they have been lost over broad expanses of the landscape as a result of widespread drainage. Such resources are not restored through simple planting of trees.”<sup>176</sup>

Thus, to properly assess impacts to fish and wildlife, the SEIS must first properly assess the direct, indirect, and cumulative impacts of the Yazoo Pumps and alternatives to the wetlands, streams, conservation lands, overbank flooding, and water quality and quantity in the Yazoo Backwater Area, as discussed throughout these comments. Once baseline habitat losses and their ecological implications are determined, the implications of those changes must be assessed for the wildlife species that rely on the affected habitats.

The 2008 Clean Water Act Final Determination (including its Technical Appendices) provide detailed information on the many species that rely on the Yazoo Backwater Area, discuss vital habitat needs for those species, and highlight the harm that the Yazoo Pumps would cause to those species. These documents should form the foundation of the SEIS assessment of fish and wildlife impacts.

The impacts to fish and wildlife must be assessed in light of an understanding of current population levels, existing stressors, and full life cycle needs of the species that utilize the project area. Lifecycle needs include such things as: fish spawning (including the timing, amount, and depth of overbank flooding needed to trigger spawning), fish rearing, fish refugia; breeding, rearing, resting, and feeding for all species; and for migratory species the availability of food and stopover habitat throughout their migratory cycles. The SEIS must also account for any harm that might be caused by species being drawn into the Pump mechanism. Critically, the SEIS also must assess the cumulative impacts of climate change on fish and wildlife, as discussed below.

As discussed in Section D.1 of these comments, the Corps’ HGM process is fundamentally flawed and will not provide a valid assessment of fish and wildlife impacts. The Corps’ typical reliance on such things as annual, seasonal, and daily averages to account for impacts is also flawed, and cannot provide the information needed to conduct a valid assessment of impacts. For example, an assessment of the

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<sup>176</sup> Sammy L. King, et al, The Ecology, Restoration, And Management Of Southeastern Floodplain Ecosystems: A Synthesis, Wetlands, Vol. 29, No. 2, June 2009, pp. 624–634.



“average annual days” of flooding or “average annual duck use days” cannot provide the information needed to determine whether access to wetlands or food supplies will be available at the right time of year and for the right amount of time to support the lifecycle needs of fish and wildlife.

The vast majority of wildlife species in the South Delta are well-adapted to living and thriving in floodplain environments, and rely on wetlands sustained by flooding for critical phases of their life cycles (including ducks, migratory songbirds, wading birds, raptors, snakes, frogs, salamanders, alligators to name a few). The tens of thousands of acres of damage to these vital wetlands caused by the Yazoo Pumps—and the elimination of spawning habitat caused by loss or reduction of overbank flooding—will not be offset by limited reductions in flood elevations during rare large-scale flood events.<sup>177</sup>

## 9. Cumulative Impacts

The cumulative impacts analysis is a critical component of NEPA review. It ensures that the reviewing agency will not “treat the identified environmental concern in a vacuum.”<sup>178</sup> Cumulative impacts are defined as:

“the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”<sup>179</sup>

In evaluating cumulative impacts:

“The analyst’s primary goal is to determine the magnitude and significance of the environmental consequences of the proposed action in the context of the cumulative effects of other past, present, and future actions. Much of the environment has been greatly modified by human activities, and most resources, ecosystems, and human communities are in the process of change as a result of cumulative effects. **The analyst must determine the realistic potential for the resource to sustain itself in the future and whether the proposed action will affect this potential; therefore, the baseline condition of the resource of concern should include a description of how conditions have changed over time and how they are likely to change in the future without the proposed action.** The potential for a resource, ecosystem, and human community to sustain its structure and function depends on its resistance to stress and its ability

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<sup>177</sup> Moreover, even during the prolonged 2019 floods, many factors unrelated to flooding played a role in wildlife impacts. For example, while significant numbers of White-tailed deer perished in 2019, a large number of those deer were deliberately culled—645 deer were killed in the Yazoo Backwater Area counties during the 2019 flood under depredation permits issued by the Mississippi Department of Wildlife, Fisheries, and Parks. Many deer in the Yazoo Backwater Area also had the ability to flee to higher ground but did not, according to William McKinley, Mississippi’s deer program coordinator. Many factors likely aggravated the impacts of the 2019 flood on the White-tailed deer in the Yazoo Backwater Area, including the extensive flood-control works and widespread conversion of habitat to agriculture that eliminated vital habitat, reduced the resiliency of the deer population, and created artificial barriers to wildlife movement. The Resilience Alternative proposed in these comments would protect and restore contiguous habitat corridors that could be used by deer to migrate out of the area during large-scale floods.

<sup>178</sup> *Grand Canyon Trust v. FAA*, 290 F.3d 339, 346 (D.C. Cir. 2002).

<sup>179</sup> 40 C.F.R. § 1508.7.



to recover (i.e., its resilience). Determining whether the condition of the resource is within the range of natural variability or is vulnerable to rapid degradation is frequently problematic. Ideally, the analyst can identify a threshold beyond which change in the resource condition is detrimental. More often, the analyst must review the history of that resource and evaluate whether past degradation may place it near such a threshold. For example, the loss of 50% of historical wetlands within a watershed may indicate that further losses would significantly affect the capacity of the watershed to withstand floods. **It is often the case that when a large proportion of a resource is lost, the system nears collapse as the surviving portion is pressed into service to perform more functions.**"<sup>180</sup>

A meaningful assessment of cumulative impacts must identify:

"(1) the area in which effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate."<sup>181</sup>

In conducting the cumulative impacts assessment, it is not enough to simply catalog past, present, and reasonably foreseeable future actions. An EIS instead must determine the specific impacts on the system of those actions and determine whether those impacts combined with the proposed action would significantly affect the ecological health and functioning of the area impacted by the project.

As recognized by the 2008 Clean Water Act Final Determination, the adverse impacts of the Yazoo Pumps must be considered:

in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.<sup>182</sup>

The significant loss of vital bottomland forested and other wetlands throughout the Mississippi Delta and the Mississippi River Alluvial Valley must be fully evaluated in the cumulative impact analysis, along with the significant losses of wildlife throughout these regions, among other things. A recent article in *Science Magazine* reported on the staggering loss of **three billion** north American birds since 1970:

North America's birds are disappearing from the skies at a rate that's shocking even to ornithologists. Since the 1970s, the continent has lost 3 billion birds, nearly 30% of the total, and even common birds such as sparrows and blackbirds are in decline, U.S. and Canadian researchers report this week online in *Science*. "It's staggering," says first author Ken Rosenberg, a conservation scientist at the Cornell University Laboratory of Ornithology. The

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<sup>180</sup> Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997) at 41 (emphasis added).

<sup>181</sup> *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 435 F.3d 852 (D.C. Cir. 2006) (quoting *Grand Canyon Trust*, 290 F.3d at 345); *Fritiofson v. Alexander*, 772 F.2d 1225, 1245 (5th Cir. 1985) (holding this level of detail necessary even at the less detailed review stage of an Environmental Assessment).

<sup>182</sup> 2008 Clean Water Act Final Determination at iii.



findings raise fears that some familiar species could go the way of the passenger pigeon, a species once so abundant that its extinction in the early 1900s seemed unthinkable.

The results, from the most comprehensive inventory ever done of North American birds, point to ecosystems in disarray because of habitat loss and other factors that have yet to be pinned down, researchers say.<sup>183</sup>

The SEIS also must analyze the impacts of climate change in the cumulative impacts analysis. Indeed, analyzing the impacts of climate change is “precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”<sup>184</sup>

Climate change is already causing significant impacts in the Mississippi River Valley and these impacts will likely grow, as recognized by the recently released Fourth National Climate Assessment.<sup>185</sup> The impacts of climate change are particularly significant for migratory species. As recognized by the United Nations Environment Program and the Convention on the Conservation of Migratory Species of Wild Animals, migratory wildlife is particularly vulnerable to the impacts of climate change:

“As a group, migratory wildlife appears to be particularly vulnerable to the impacts of Climate Change because it uses multiple habitats and sites and use a wide range of resources at different points of their migratory cycle. They are also subject to a wide range of physical conditions and often rely on predictable weather patterns, such as winds and ocean currents, which might change under the influence of Climate Change. Finally, they face a wide range of biological influences, such as predators, competitors and diseases that could be affected by Climate Change. While some of this is also true for more sedentary species, migrants have the potential to be affected by Climate Change not only on their breeding and non-breeding grounds but also while on migration.”

“Apart from such direct impacts, factors that affect the migratory journey itself may affect other parts of a species’ life cycle. Changes in the timing of migration may affect breeding or hibernation, for example if a species has to take longer than normal on migration, due to changes in conditions *en route*, then it may arrive late, obtain poorer quality breeding resources (such as territory) and be less productive as a result. If migration consumes more resources than normal, then individuals may have fewer resources to put into breeding . . . .”

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<sup>183</sup> Elizabeth Pennisi, Three billion North American birds have vanished since 1970, surveys show, Science, September 19, 2019 (available at <https://www.sciencemag.org/news/2019/09/three-billion-north-american-birds-have-vanished-1970-surveys-show>).

<sup>184</sup> Center for Biological Diversity v. Nat’l Hwy Traffic Safety Administration, 538 F.3d 1172, 1217 (9th Cir. 2008); Center for Biological Diversity v. Kempthorne, 588 F.3d 701, 711 (9th Cir. 2009) (NEPA analysis properly included analysis of the effects of climate change on polar bears, including “increased use of coastal environments, increased bear/human encounters, changes in polar bear body condition, decline in cub survival, and increased potential for stress and mortality, and energetic needs in hunting for seals, as well as traveling and swimming to denning sites and feeding areas.”)

<sup>185</sup> The SEIS should fully consider and carefully evaluate the information contained in the Fourth National Climate Assessment, which can be accessed at <https://nca2018.globalchange.gov/>.



“Key factors that are likely to affect all species, regardless of migratory tendency, are changes in prey distributions and changes or loss of habitat. Changes in prey may occur in terms of their distributions or in timing. The latter may occur though differential changes in developmental rates and can lead to a mismatch in timing between predators and prey (“phenological disjunction”). Changes in habitat quality (leading ultimately to habitat loss) may be important for migratory species that need a coherent network of sites to facilitate their migratory journeys. Habitat quality is especially important on staging or stop-over sites, as individuals need to consume large amounts of resource rapidly to continue their onward journey. Such high quality sites may [be] crucial to allow migrants to cross large ecological barriers, such as oceans or deserts.”<sup>186</sup>

Migratory birds are at particular risk from climate change. Migratory birds are affected by changes in water regime, mismatches with food supply, sea level rise, and habitat shifts, changes in prey range, and increased storm frequency.<sup>187</sup>

The SEIS should also carefully assess the cumulative impact on the loss of Yazoo Backwater Area wetlands to the dire conditions currently facing amphibian populations worldwide. Amphibians thrive in cool wetland environments and small, isolated wetlands play especially important roles in amphibian productivity.<sup>188</sup> Amphibian populations thrive when there are a variety of small ecosystems within a regional landscape in which a “dynamic equilibrium” of different populations becomes established.<sup>189</sup> Habitat fragmentation can disturb this dynamic equilibrium by disruption patterns of amphibian emigration and immigration.

Amphibians in general are at critical risk worldwide. In the United States, the IUCN Red List of Threatened Species lists 56 amphibian species and 37 reptile species as known to be critically endangered, endangered, or vulnerable.<sup>190</sup> Worldwide, at least 1,950 species of amphibians are threatened with extinction of which 520 species are critically endangered, 783 are endangered, and 647 species are vulnerable. This represents 30 percent of all known amphibian species.<sup>191</sup> In 2004, scientists estimated that most of 1,300 other amphibian species are also threatened though sufficient data are currently lacking to be able to accurately assess the status of those species.<sup>192</sup>

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<sup>186</sup> UNEP/CMS Secretariat, Bonn, Germany, *Migratory Species and Climate Change: Impacts of a Changing Environment on Wild Animals* (2006) at 40-41 (available at [http://www.cms.int/publications/pdf/CMS\\_ClimateChange.pdf](http://www.cms.int/publications/pdf/CMS_ClimateChange.pdf)).

<sup>187</sup> *Id.* at 42-43.

<sup>188</sup> Gibbons, J. Whitfield, Christopher Winne, et. al. 2006. Remarkable Amphibian Biomass and Abundance in an Isolated Wetland: Implications for Wetland Conservation. *Conservation Biology* Volume 20, No. 5, 1457–1465.

<sup>189</sup> Mann, W., P. Dorn, and R. Brandl. 1991. Local distribution of amphibians: The importance of habitat fragmentation. *Global Ecology and Biogeography Letters* 1:36-41.

<sup>190</sup> IUCN Red List version 2013:2, Table 5: Threatened species in each country (totals by taxonomic group), available at [http://cmsdocs.s3.amazonaws.com/summarystats/2013\\_2\\_RL\\_Stats\\_Table5.pdf](http://cmsdocs.s3.amazonaws.com/summarystats/2013_2_RL_Stats_Table5.pdf) (visited on November 24, 2013.)

<sup>191</sup> IUCN Red List version 2013:2, Table 3a: Status category summary by major taxonomic group (animals), available at [http://cmsdocs.s3.amazonaws.com/summarystats/2013\\_2\\_RL\\_Stats\\_Table3a.pdf](http://cmsdocs.s3.amazonaws.com/summarystats/2013_2_RL_Stats_Table3a.pdf) (visited on November 24, 2013).

<sup>192</sup> Science Daily, *Amphibians In Dramatic Decline; Study Finds Nearly One-Third Of Species Threatened With Extinction* (October 15, 2004), available at <http://www.sciencedaily.com/releases/2004/10/041015103700.htm> (visited on November 24, 2013).



A recent study demonstrates the increasingly dire conditions of amphibians worldwide:

“Current extinction rates are most likely 136–2707 times greater than the background amphibian extinction rate. These are staggering rates of extinction that are difficult to explain via natural processes. No previous extinction event approaches the rate since 1980 (Benton and King, 1989).

Despite the catastrophic rates at which amphibians are currently going extinct, these are dwarfed by expectations for the next 50 yr (Fig. 1). If the figure provided by Stuart et al. (2004) is true (but see Pimenta et al., 2005; Stuart et al., 2005), one-third of the extant amphibians are in danger of extinction. This portends an extinction rate of 25,000–45,000 times the expected background rate. Episodes of this stature are unprecedented. Four previous mass extinctions could be tied to catastrophic events such as super volcanoes and extraterrestrial impacts that occur every 10 million to 100 million years (Wilson, 1992). The other mass extinction seems to be tied to continental drift of Pangea into polar regions leading to mass glaciation, reduced sea levels, and lower global temperatures (Wilson, 1992). The current event far exceeds these earlier extinction rates suggesting a global stressor(s), with possible human ties.”<sup>193</sup>

Recent studies also point to the role of global climate change in promoting potentially catastrophic impacts to amphibian populations. For example:

- Global climate change will result in changes to weather and rainfall patterns that can have significant adverse effects on amphibians. Drought can lead to localized extirpation. Cold can induce winterkill in torpid amphibians. It is possible that the additional stress of climate change, on top of the stresses already created by severe loss of habitat and habitat fragmentation may jeopardize many amphibian species.<sup>194</sup>
- Recent studies suggest that climate change may be causing global mass extinctions of amphibian populations. Particularly alarming is the fact that many of these disappearances are occurring in relatively pristine area such as wilderness areas and national parks.<sup>195</sup> One recent study suggests that climate change has allowed the spread of a disease known as chytridiomycosis which has led to extinctions and declines in amphibians. Climate change has allowed this disease to spread by tempering the climate extremes that previously kept the disease in check.<sup>196</sup> About two-thirds of the 110 known harlequin frog species are believed to have

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<sup>193</sup> McCallum, M. L. (2007). “Amphibian Decline or Extinction? Current Declines Dwarf Background Extinction Rate. *Journal of Herpetology* 41 (3): 483–491. [doi:10.1670/0022-1511\(2007\)41\[483:ADOECD\]2.0.CO;2](https://doi.org/10.1670/0022-1511(2007)41[483:ADOECD]2.0.CO;2).

<sup>194</sup> Sjogren, P. 1993a. Metapopulation dynamics and extinction in pristine habitats: A demographic explanation. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 244; Sjogren, P. 1993b. Applying metapopulation theory to amphibian conservation. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 244-245.

<sup>195</sup> Pounds, J. A., and M. L. Crump. 1994. Amphibian declines and climate disturbance: The case of the golden toad and the harlequin frog. *Conservation Biology* 8:72-85; Lips, K. R. 1998. Decline of a Tropical Montane Amphibian Fauna. *Conservation Biology* 12:106-117; Lips, K., F.Brem, R. Brenes, J.D. Reeve, R.A. Alford, J. Voyles, C. Carey, L. Livo, A. P. Pessier, and J.P. Collins 2006. Emerging infectious disease and the loss of biodiversity. *Proceedings of the National Academy of Sciences* 103:3165-3170.

<sup>196</sup> Pounds, J.A., M.P.L. Fogden, J.H. Campbell. 2006. Biological response to climate change on a tropical mountain. *Nature* 398, 611-615.



vanished during the 1980s and 1990s because of the chytrid fungus *Batrachochytrium dendrobatidis*. Other studies indicate that amphibians may be particularly sensitive to changes in temperature, humidity, and air and water quality because they have permeable skins, biphasic life cycles, and unshelled eggs.<sup>197</sup>

- Climate change may also affect amphibian breeding patterns.<sup>198</sup> Amphibians spend a significant part of the year protecting themselves from cold or shielding themselves from heat. They receive cues to emerge from their shelters and to migrate to ponds or streams to breed from subtle increases in temperature or moisture. As the earth warms, one potential effect on amphibians is a trend towards early breeding, which makes them more vulnerable to snowmelt-induced floods and freezes common in early springs. Some studies already indicate a trend towards earlier breeding in certain amphibian species.<sup>199</sup>
- Increases in UV-B radiation in the northern hemisphere due to ozone depletion is also having an adverse impact on amphibians.<sup>200</sup> One study suggests that ultraviolet-B (UV-B) radiation adversely affects the hatching success of amphibian larvae.<sup>201</sup> High levels of UV-B also induced higher rates of developmental abnormalities and increased mortality in certain species (*Rana clamitans* and *R. sylvatica*) than others that were shielded from UV-B.<sup>202</sup> UV-B also can have detrimental effects on embryo growth.

The cumulative impacts of climate change must be fully addressed and accounted for in the SEIS.

## 10. Environmental Justice

The SEIS must assess whether the Yazoo Pumps would cause disproportionate impacts to low income communities and communities of color. Executive Order 12898 requires that each Federal agency achieve environmental justice by identifying and addressing disproportionately high adverse human health or environmental effects of federal activities on minority and low-income populations.

Particular concerns that should be addressed in this assessment include:

- Exposing such communities to increased flood risks, including by discharging the Yazoo

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<sup>197</sup> Carey, C., and M. A. Alexander. 2003. Climate change and amphibian declines: is there a link? *Diversity and Distributions* 9:111-121.

<sup>198</sup> Carey, C., and M. A. Alexander. 2003. Climate change and amphibian declines: is there a link? *Diversity and Distributions* 9:111-121.

<sup>199</sup> Beebee, T. J. C. 1995. Amphibian Breeding and Climate. *Nature* 374:219-220; Blaustein, A. R., L. K. Belden, D. H. Olson, D. M. Green, T. L. Root, and J. M. Kiesecker. 2001. Amphibian breeding and climate change. *Conservation Biology* 15:1804-1809; Gibbs, J. P., and A. R. Breisch. 2001. Climate warming and calling phenology of frogs near Ithaca, New York, 1900-1999. *Conservation Biology* 15:1175-1178.

<sup>200</sup> Blither, M., and W. Ambach. 1990. Indication of increasing solar ultraviolet-B radiation flux in alpine regions. *Science* 248:206-208; Kerr, J. B., and C. T. McElroy. 1993. Evidence for large upward trends of ultraviolet-B radiation linked to ozone depletion. *Science* 262:1032-1034.

<sup>201</sup> Blaustein, A. R., P. D. Hoffman, D. G. Hokit, J. M. Kiesecker, S. C. Walls, and J. B. Hays. 1994a. UV repair and resistance to solar UV-B in amphibian eggs: A link to population declines? *Proceedings of the National Academy of Science* 91:1791-1795.

<sup>202</sup> Grant, K. P., and L. E. Licht. 1993. Effects of ultraviolet radiation on life history parameters of frogs from Ontario, Canada. Abstracts, Second World Congress of Herpetology, Adelaide, Australia, p. 101.



Pumps into what will be an already flooded Yazoo River, and eliminating tens of thousands of acres of wetlands that provide natural flood protection;

- Adversely affecting subsidence hunting and fishing, including through extensive loss of vital waterfowl and fisheries habitat (including fisheries spawning and rearing habitat);
- Increased exposure to pesticides, fertilizers, and other agricultural chemicals due to project-induced agricultural intensification, including through increased contamination in area streams;
- The potential for exposure to toxic materials, including through the release or re-suspension of contaminated sediments during construction and operation activities, and the potential for releasing significant amounts of toxic wastewater into the Yazoo River through inundating industrial-sized wastewater treatment ponds during operation of the Pumps;
- Significant noise and air pollution from construction and operation activities; and
- The cumulative impacts of any such activities.

#### E. The SEIS Must Demonstrate Compliance with the 404(b)(1) Guidelines

The Clean Water Act 404(b)(1) Guidelines prohibit a “discharge into the aquatic ecosystem **unless it can be demonstrated** that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/ or probable impacts of other activities affecting the ecosystem of concern.”<sup>203</sup> The “degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by the[] Guidelines.”<sup>204</sup>

Under the 404(b)(1) Guidelines, the proposed Yazoo Pumps project is prohibited if the proposed discharge (and operation of the Yazoo Pumps) meet any of the following criteria:

- (1) The proposed discharge “will cause or contribute to significant degradation of the waters of the United States.” 40 C.F.R. § 230.10(c).
- (2) The proposed discharge will violate applicable toxic effluent standards or prohibition under Clean Water Act § 307 and cause or contribute to violations of state water quality standards. 40 C.F.R. § 230.10(b).
- (3) The proposed discharge will result in a likelihood of the destruction or adverse modification of formally designated critical habitat. 40 C.F.R. § 230.10(b).
- (4) The Corps has not clearly demonstrated that there is no “practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a).

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<sup>203</sup> 40 C.F.R. § 230.1(c) (emphasis added).

<sup>204</sup> 40 C.F.R. § 230.10(d).



- (5) The Corps has not taken “appropriate and practicable” steps to minimize potential adverse impacts on the aquatic ecosystem. 40 C.F.R. § 230.10(d).

The SEIS must carry out the analyses highlighted throughout these comments to determine whether the recommended alternative can proceed under the 404(b)(1) Guidelines. As noted above, the SEIS cannot demonstrate compliance if it looks at only one alternative. The Corps also may not rely on the 2007 SEIS to argue that the Yazoo Pumps are the least environmentally damaging alternative, including for the obvious reason that the Pumps are the same project recommended in the 2007 SEIS—a project determined to be so damaging that it was vetoed under Clean Water Act § 404(c).

#### **F. The SEIS Must Fundamentally Reexamine the Project’s Economic Costs and Benefits**

The SEIS must fundamentally reexamine the project’s economic costs and benefits. This reexamination is essential in light of the new data, changed conditions, cost increases, new project components, and new project location, among other things. This update is also critical given the many deficiencies in the 2007 SEIS economic assessment.

The SEIS must also ensure that the same criteria used to assess the geographic extent of wetland impacts (i.e., the new period of record and other data referred to in the Notice of Intent) is also used to assess the geographic extent of flood damage reduction benefits. If, as claimed in the draft Wetlands Analysis, the 2007 period of record overestimated wetland impacts, the 2007 period of record would also have overestimated flood damage reduction benefits.

##### **1. Costs of Construction, Mitigation, and Operations and Maintenance**

The SEIS should develop a completely new estimate of project costs, including mitigation costs. A simple update based on the Corps’ Construction Cost Index is insufficient to meaningfully account for the increases in project costs given the passage of 15 years (the 2007 estimate was based on 2005 price levels), the many changes in the project area, the increased costs associated with restoring wetlands on frequently flooded agricultural lands, the proposed Deer Creek site location—which will require significant additional construction than would be required at Steele Bayou, and the costs of the newly proposed well fields, among many other things.<sup>205</sup>

Project costs should also include the quantified value of the ecosystem services that will be lost to the Yazoo Pumps, as required by the March 2013 Principles and Requirements for Federal Investments in Water Resources and the December 2014 Interagency Guidelines that implement those Principles and Requirements (collectively, the PR&G). The PR&G apply to Corps projects, and the Corps has been directed to develop agency specific guidelines to ensure full implementation.

The March 2013 Principles and Requirements state that evaluation methods “should apply an ecosystem services approach in order to appropriately capture all effects (economic, environmental and social) associated with a potential Federal water resources investment.” The December 2014 Interagency

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<sup>205</sup> The Corps’ 2007 SEIS estimated construction costs at more than \$220 million based on 2005 price levels. Updating those costs using the Corps’ Civil Works Construction Cost Index and current mitigation costs puts the cost of construction including required compensatory mitigation at well over \$300.6 million based on 2018 price levels. The additional promised reforestation brings the total project construction costs to \$438.5 million. The 2007 SEIS estimated operations and maintenance costs at \$2.1 million each year.



Guidelines state that “Federal investment impacts on the environment or ecosystem may be understood in terms of changes in service flows. The process of identifying, evaluating, and comparing these changes provides a useful organizing framework to produce a complete accounting. **Reduced service flows over time amount to costs, and increased services flows over time amount to benefits.**” The Guidelines also state: “Agencies must provide an explicit list of the services that flow from the existing study area ecosystems and infrastructure (including operational plans) with identification of those services that are likely to meaningfully change within the larger context of the watershed because of the Federal investment.”

## 2. Non-Federal Cost Share

As noted in Section D.5 of these comments, the SEIS must carefully assess whether locating the Yazoo Pumps at the Deer Creek location results in the loss of the non-federal cost share waiver enacted in 1997. The non-federal cost share waiver applies “to any project” or “separable element thereof” on which physical construction is initiated after April 30, 1986. 33 USC 2213(e). For purposes of this provision, “physical construction shall be considered to be initiated on the date of the award of a construction contract.” 33 USC 2213(e).

The Water Resources Development Act of 1986 imposed a 25% non-federal cost share for all flood control projects on which physical construction was initiated after April 30, 1986 (33 U.S.C. § 2213). This provision established a non-federal cost share for the Yazoo Pumps. A construction contract had been awarded for inlet and outlet channel and cofferdam at the Steele Bayou location of the Yazoo Pumps on March 25, 1986, but construction did not begin until May 5, 1986.

The Water Resources Development Act of 1996 exempted the Yazoo Pumps from the non-federal cost share that had been implemented in 1986, while raising the non-federal cost share for all other flood control projects to 35%. That exemption was created by the addition of the following language to the cost share provision: “For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract.” 33 USC 2213 (e)(1). Notably, the Yazoo Pumps project was not mentioned by name in the provision that enacted the exemption.

The contract award that triggered the Yazoo Pumps cost-share waiver was the contract to construct the entrance and exit channel and cofferdam for the pump station at the Steele Bayou location. This work was completed in 1987 at a cost of approximately \$2,500,000. However, this construction is only a component of the Yazoo Pumps project if the Pumps are located at Steele Bayou. The already-constructed entrance and exit channel and cofferdam could serve no purpose whatsoever for the Yazoo Pumps—and will not be a component of the Yazoo Pumps project—if the Pumps are moved to the Deer Creek location. See Figure 13, below.<sup>206</sup> As a result, the date of the award of the contract for these components would no longer act to waive the non-federal cost share requirement.

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<sup>206</sup> This slide was obtained through a Freedom of Information Act request.



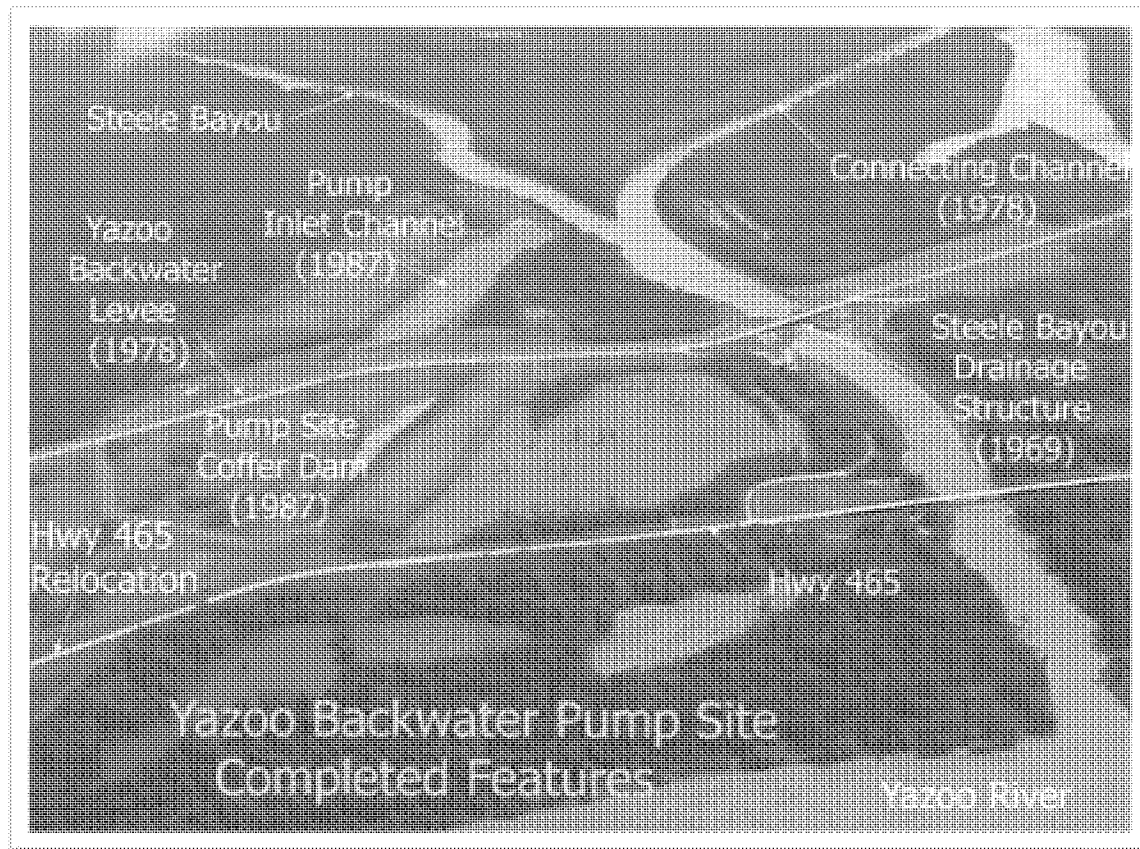


Figure 13, Completed Construction at Steele Bayou Location from USACE Presentation to EPA, Yazoo Backwater Project Brief Region IV 15 May 2019

In short, if the Yazoo Pumps are moved to the Deer Creek location, the project could not proceed unless a non-federal sponsor could provide the non-federal cost share of 35% of total project costs (including mitigation). So, for example, if it costs \$440 million to build the Yazoo Pumps at the Deer Creek location, the non-federal sponsor would be required to contribute \$154 million of those costs, plus all necessary lands, easements, and rights of way. If construction costs increase, the costs to the non-federal sponsor would also increase since the non-federal cost share is based on a percentage of total project costs (including mitigation).

### 3. Flood Damage Reduction Benefits—Agriculture

The 2007 SEIS determined that more than 80% of the alleged benefits from the Yazoo Pumps will come from increased agricultural production—which makes it clear that agricultural drainage is the project’s true primary purpose. As the Corps is well aware, draining wetlands to promote increased agricultural production is an archaic concept from another era, and is in direct conflict with current federal law and policy.

The 2007 analysis of agricultural benefits also contained many extensive flaws, as documented by an independent economic review prepared in cooperation with the Environmental Protection Agency.<sup>207</sup>

<sup>207</sup> Leonard Shabman & Laura Zepp Review Comments on “Yazoo Backwater Reformulation” dated September 24, 2000; see also Leonard Shabman & Laura Zepp, An Approach for Evaluating Nonstructural Actions with Application



The SEIS must make sure that these flaws are not repeated in the new economic analysis. To this end, it is essential that the current SEIS start over from scratch and conduct a fundamentally new and comprehensive assessment of agricultural benefits that carefully assesses and accounts for at least the following:

- (1) A full and accurate accounting of land use in the Yazoo Backwater Area. Agricultural benefits must be carefully assessed only on agricultural lands that would see reduced levels of inundation during the growing season sufficient to justify more intensive agricultural practices. No agricultural or other flood damage reduction benefits should be calculated for conservation and easement lands in the Yazoo Backwater Area. Instead, the value of the ecosystem services lost due to adverse project impacts on these lands must be quantified and accounted for as a project cost in the benefit-cost assessment. See Sections C.2 and D.3., above. In addition, no agricultural or other flood damage reduction benefits should be calculated for lands used for mitigation for the Yazoo Pumps or other projects, or on lands that will engage in voluntary reforestation pursuant to the Proposed Action.
- (2) A comprehensive assessment of whether the Yazoo Pumps would in fact provide any statistically significant benefit to agricultural production, or would instead harm agricultural production in the Yazoo Backwater Area. A scientific study conducted in the Yazoo River basin strongly suggests that the Yazoo Pumps would harm—not help—agricultural production in the Yazoo Backwater Area.<sup>208</sup>

This study looked at the riverine hydrological and regional climatic regime relationships to agriculture (cotton, soybeans) and the principal riverine fish stocks in the upper Yazoo River basin. The study looked at 31 years of data (from 1964 to 1994) to compare flooding in the study area with soybean and cotton production. It found that **“no factor associated with flood events adversely influence production of cotton and soybeans.** However, with regard to soybeans, the amount of area flooded two years prior to a crop was positively related to soybean yield. **From a long-term perspective therefore, the data suggest that flooding may benefit agricultural enterprises associated with soybean production.”**<sup>209</sup> The study also found that **cotton yield was positively correlated with maximum area flooded during the same year**, noting that this was likely due to increased soil moisture which benefits cotton production. This was true even though floods resulted in fewer acres of cotton being planted during flood years.<sup>210</sup>

The study did note, however, that a different pattern appeared to emerge over shorter time periods “which may explain the public perception that flooding adversely impacts agriculture in the area. During the 5 year period from 1990-1994, high precipitation was

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to the Yazoo River (Mississippi) Backwater Area (February 7, 2000) (prepared in cooperation with the U.S. Environmental Protection Agency, Region 4). Both of these documents were submitted with the Environmental Protection Agency Comments on the 2007 Draft SEIS.

<sup>208</sup> Jackson, D. C. and Q. Ye. 2000. Riverine fish stock and regional agronomic responses to hydrologic and climatic regimes in the upper Yazoo River basin. Pages 242-257 in I. G. Cowx, Editor. Management and Ecology of River Fisheries. Fishing News Books. Blackwell Science. London. This study was submitted into the record for the veto process on May 5, 2008.

<sup>209</sup> Id.(emphasis added).

<sup>210</sup> Id.



negatively related to area planted in cotton and the percent of the area planted in soybeans that was actually harvested. However, flooding during this period did not significantly affect overall yield of cotton and soybeans.”<sup>211</sup> And again, there was a positive correlation between cotton yields and the maximum area flooded during the same year.

That same study also shows that flooding benefits fisheries in the area, finding a positive relationship between flooding and positive fish stock characteristics, which the study defines as more and bigger fish. The study also noted that much of the productive potential for fisheries in floodplain river ecosystems is determined by the dynamics of overbank flooding and riparian vegetation.<sup>212</sup>

- (3) The ability to plant crops even during years with large flood events. Even during the prolonged 2019 flood event, 316,000 acres of crops were grown in the Yazoo Backwater Area (more than 55% of the 10-year average acreage of crops grown in the Yazoo Backwater Area), according to USDA data.<sup>213</sup> In addition, the Conservation Organizations understand that farmers were eligible to receive disaster relief or other forms of compensation to minimize economic losses due to the inability to plant crops on the Yazoo Backwater Area lands that could not be planted as a result of the 2019 flood event. See Section C.2, above.

In 2008, then Mississippi Governor Haley Barbour stated on Mississippi Public Radio that even during the 100-year flood of 1973, farmers had good soybean crops. Indeed, we understand that many farmers prefer to plant after floods because it is cheaper to do so. Post-flood planting reduces the amount of chemicals that must be applied to the land to clear the fields, and reduces the amount of fertilizer needed due to the nutrients provided by the flooding.

- (4) A full assessment of documentation demonstrating the amount of uninsured and/or unsubsidized crop losses per year for each farm in the Yazoo Backwater Area, and the elevation of lands on which the lost crops were planted. Only uninsured losses that could be reduced by operation of the Yazoo Pumps should be accounted for in the benefits assessment.
- (5) A full assessment of farm subsidy payments in the Yazoo Backwater Area to assess whether additional subsidies to intensify agricultural production are in fact necessary or an appropriate investment of federal taxpayer dollars. See Section C.2. and Figures 6 and 7, above. As the Corps is aware, an extensive and independent economic review determined that the Yazoo Pumps would do nothing more than **“help landowners grow crops on land that is farmed only to earn farm subsidy payments,”** based on the economic data used by the Corps in the 2007 SEIS.<sup>214</sup> That review also determined that

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<sup>211</sup> Id.

<sup>212</sup> Id.

<sup>213</sup> USDA National Agricultural Statistics Service, CropScape Cropland Data Layer.

<sup>214</sup> Leonard Shabman & Laura Zepp Review Comments on “Yazoo Backwater Reformulation” dated September 24, 2000 (emphasis in original); see also Leonard Shabman & Laura Zepp, An Approach for Evaluating Nonstructural Actions with Application to the Yazoo River (Mississippi) Backwater Area (February 7, 2000) (prepared in



the Yazoo Pumps could not be economically justified even at what was then a \$207 million projected construction cost.<sup>215</sup>

- (6) A full assessment of farm ownership in the areas of the Yazoo Backwater Area that would be able to intensify agricultural production due to operation of the Yazoo Pumps, to ensure that the concentration of benefits warrants the large investment of federal taxpayer dollars that would be required to construct and operate the Pumps. The 2007 SEIS noted that there were only 192 farms in the project area with an average size of 2,913 acres.<sup>216</sup> The 2007 SEIS did not provide any information on the elevation of those farms, so it was not possible to assess what percentage of the total farms in the project area might allegedly benefit from the Yazoo Pumps. The FSEIS also did not provide farm ownership information, so it is was possible to discern whether some landowners or corporations own multiple farms in the project area.
- (7) A full assessment of farm elevations in the Yazoo Backwater Area, to ensure that only those farms in areas that could see reduced flood inundation are accounted for in the benefits analysis, and to ensure that no benefits are counted for farms lying being the 90-foot elevation since the Yazoo Pumps authorization does not authorize pumping below the 90-foot elevation.

#### 4. Flood Damage Reduction Benefits—Homes, Businesses, Structures

In assessing flood damage reduction benefits to homes, businesses, and other structures, the SEIS should utilize an up-to-date inventory of all structures and roads in the Yazoo Backwater Area that provides precise elevation data. The SEIS should also ground-truth its quantification of flood damage reduction benefits, including by comparing the predicted benefits with the limited, and highly concentrated, structural damage incurred during the 2019 flood. See Section C.2. and Figures 5, 8, and 9, above.

Before assessing potential flood damage reduction benefits for the Eagle Lake Community, the Corps should conduct a detailed after-action assessment of the cause of the 2019 Eagle Lake area flooding. Factors that likely influenced the 2019 flooding of homes near Eagle Lake include the Lake's water control management regime and actions associated with maintaining the stability of the portion of the Mississippi River mainline levee that abuts Eagle Lake. If these factors played a role in the flooding surrounding Eagle Lake, it is likely that the area would have flooded in 2019 even if the Yazoo Pumps were in operation. The multiple risk factors facing Eagle Lake must be accounted for when calculating any flood damage reduction benefits for the Yazoo Pumps.

The SEIS should also ensure that it does not overstate potential benefits as it clearly did in the 2007 SEIS. Some of the most egregious examples of these overstatements include:

- Flood damage reduction benefits – automobiles. The 2007 SEIS claims that the average household in the project area has two automobiles valued at \$15,000 per car. The Corps

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cooperation with the U.S. Environmental Protection Agency, Region 4). Both of these documents were submitted with the Environmental Protection Agency Comments on the 2007 Draft SEIS.

<sup>215</sup> Id.

<sup>216</sup> 2017 FSEIS Main Report at 24.



says that despite the low velocity flooding typical in the study area that about 1/3 of these cars will get flood damages estimated at \$298,000 per year. These estimates make no sense given the economics in the project area. At the time these values were assessed, the average per capita income in Sharkey and Issaquena counties was \$11,187, and one third of the population lived below the poverty level. Median household income was approximately \$20,000 to \$22,000 depending on the county. Based on these economic realities, it is highly unlikely that each home would have two cars valued at \$15,000 sitting in the driveway, or that if this were the case, it is even more unlikely that the owners would not simply drive their cars to higher ground during the typical slow-moving flood event.

- Flood damage reduction benefits – home values. The Corps bases its flood damage reduction benefits on inflated home values in the region, which in turn inflates flood damage reduction benefits for contents of homes (see below). The 2007 SEIS asserts that the average residential home in the project area is valued at \$44,000 based on data collected by a local contractor from 2000-2005. FSEIS, Appendix 7 at 77. This contrasts considerably with data that the Corps supplied to Dr. Shabman and Laura Zepp in 2000. In 2000, the Corps identified residential one-story building average values at \$22,405. Accuracy in the valuation of homes is particularly important in calculating flood damages in this case because the estimate of contents damage is directly correlated to property value.
- Flood damage reduction benefits – home contents. For one- and two-story homes in the project area, the Corps assumed that contents are equal to 100 percent of the home value, and for mobile homes the Corps assumes that contents are equal to 50 percent of the structure's value. Given the lower average income levels that exist in the project area counties, these assumptions would appear to have overstated potential damages, and failed to correlate with the experience of the National Flood Insurance Program.

## 5. Benefits of Nonstructural, Natural, and Nature-Based Measures

The many flood damage reduction benefits (and the cost-effectiveness) of nonstructural, natural, and nature-based measures are highlighted in Section C.2., above. These benefits must be fully accounted for to ensure proper assessment of these approaches.

There are extensive, and well-established tools for the assessing ecosystem services provided by healthy natural systems, and these should be used by the Corps in developing the SEIS. A Duke University, Nicholas Institute report *Valuing Ecosystem Services from Wetland Restoration in the Mississippi Alluvial Valley* is provided at Attachment H to the Comments. An Earth Economics report *The Value of Restoring the Mississippi River Delta* is provided at Attachment I to these Comments. The Conservation Organizations will supply additional ecosystem services valuation studies upon request. In addition to fully accounting for the ecosystem service values, the SEIS should also account for benefits associated with avoiding flood-fighting costs, the additional cost avoidance benefits discussed below, and National Flood Insurance Rate reduction benefits when assessing the benefits of these measures.

- Cost Avoidance Benefits: Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. A recent study documents these avoidance benefits (present value of avoided costs less the Wetlands Reserve easement and restoration costs) in Mississippi at \$870 per acre. *Wetland Reserve Easement Program Economic Assessment: Estimated Commodity Program and Crop*



*Insurance Premium Subsidy Cost Avoidance Benefits*, prepared for the Nature Conservancy (June 2, 2018) (authored by retired U.S. Department of Agriculture economist Dr. Doug Lawrence).

- National Flood Insurance Program Rate Reductions: Protecting floodplains has the largest impact on lowering National Flood Insurance Program (NFIP) rates for communities participating in the voluntary Community Rating System Program (CRS). Participation in the CRS can reduce NFIP rates from 15% to 45%. The CRS credits over 90 elements of comprehensive floodplain and watershed management, including providing significant credits for protecting the natural functions of riverine floodplains by preserving natural floodplain open space, acquiring flood-prone land and returning it to its natural state, and protecting and restoring natural floodplain functions and habitat.<sup>217</sup>

#### G. The SEIS Must Fully Analyze Mitigation and Include a Detailed Mitigation Plan

As documented in the 2008 Clean Water Act Final Determination, the mitigation plan established by the 2007 SEIS was woefully inadequate and could not compensate for the significant adverse impacts of the Yazoo Pumps.

The SEIS must develop a fundamentally new mitigation plan that complies with the requirements highlighted below. Critically, the first step in developing that plan is to accurately assess the full scope of adverse impacts to wetlands, streams, fish and wildlife, and other critical resources. The SEIS must also address how the promised mitigation can be achieved on lands that will be drained by the Yazoo Pumps. There is ample evidence that the Yazoo Pumps would, at a minimum, significantly undermine the effectiveness of mitigation measures by draining the very lands targeted for mitigation.<sup>218</sup>

To comply with NEPA, the SEIS must analyze mitigation measures with “sufficient detail to ensure that environmental consequences have been fairly evaluated.”<sup>219</sup> To comply with the Water Resources Development Acts, the SEIS must meet the mitigation requirements established by 33 U.S.C. § 2283(d), including the requirement to develop a detailed mitigation plan.

NEPA requires that the SEIS discuss mitigation measures “in sufficient detail to ensure that environmental consequences have been fairly evaluated.”<sup>220</sup> A “perfunctory description” of the mitigating measures is not sufficient.<sup>221</sup> As the Supreme Court has noted, this is because:

omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of

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<sup>217</sup> Federal Emergency Management Agency Fact Sheet, *The Community Rating System works to Protect Natural Floodplains* (2015) (available at <https://www.fema.gov/media-library-data/1459276443255-663d02584edc3ac6cda2f4a7f337100b/Natural-Functions-and-CRS.pdf>).

<sup>218</sup> See *Env'tl. Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 81 (D.D.C. 2007) (“The agency cannot reliably conclude that the selected project has minimized adverse impacts on aquatic ecosystems to the extent practicable when its habitat mitigation calculations are infected with an underestimate of the floodplain habitat impacted.”).

<sup>219</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

<sup>220</sup> *Id.*

<sup>221</sup> *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir.1998).



the adverse effects. An adverse effect than can be fully remedied by, for example, an inconsequential public expenditure is certainly not as serious as a similar effect that can only be modestly ameliorated through the commitment of vast public and private resources.<sup>222</sup>

The SEIS also must discuss the effectiveness of the proposed mitigation:

“An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. A mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.”<sup>223</sup>

This should include a discussion of how the mitigation will effectively address temporal losses (i.e., it takes many years to restore a fully functioning, mature wetland and many decades to restore a fully functioning mature bottomland hardwood wetland forest), and how mitigation for wetland losses can be effectively carried out in areas drained by the Yazoo Pumps. A bald assertion that mitigation will be successful is not sufficient. The effectiveness must instead be supported by “substantial evidence in the record.”<sup>224</sup>

A discussion of the effectiveness is particularly critical because, despite progress in this area, wetland and stream mitigation often fails or does not fully replace lost ecological values. For example, the National Research Council has concluded:

“Attempts to restore forested wetlands of the Southeast (e.g., bottomland hardwoods and cypress swamps) have encountered difficulties related to the time required to replace mature trees, the lack of material to transplant, the lack of knowledge of how and when to carry out seeding or transplantation, (Clewell and Lea, 1989) and altered hydrology (drainage for conversion to agriculture) of the wetland area. Natural forested wetlands may support hundreds of plant species, many of which thrive in the understory (91 percent of 409 species in one riverine forest were understory species). Old-growth forests are dominated by trees that gradually achieve a dominant role in the canopy and that are self-sustaining through their ability to reproduce in their own shade. It is not clear that such climax species can be successfully established in open sites, or whether their introduction must await development of seral (intermediate successional stage) plant communities. Clewell and Lea (1989) noted the need for intensive site preparation to reduce competition between weeds and transplanted tree seedlings. Their review was the first to mention insect herbivory and fire as potential problems. In many cases, restoration of suitable hydrologic conditions will be necessary. The short time period within which forest restoration attempts have been monitored precludes an evaluation of their functional equivalency with natural reference systems.”<sup>225</sup>

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<sup>222</sup> *Id.*

<sup>223</sup> *South Fork Band Council v. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (internal citations omitted).

<sup>224</sup> *Wyoming Outdoor Council v. U.S. Army Corps of Eng’rs*, 351 F. Supp. 2d 1232, 1252 (D. Wyo. 2005).

<sup>225</sup> National Research Council, *Restoration of Aquatic Ecosystems: Science, Technology, and Public Policy* (1992) at 311-12.



Absent a meaningful discussion of the effectiveness of the proposed mitigation, the SEIS will not have taken the mandated “hard look” at the environmental impacts of the proposed action and alternatives to the action, and will fail to provide “a clear basis for choice among options by the decisionmaker.”<sup>226</sup>

Provisions established through a number of Water Resources Development Acts require the Corps to mitigate the adverse impacts of the project.<sup>227</sup> The Corps is required to mitigate all losses to fish and wildlife created by a project unless the Secretary determines that the adverse impacts to fish and wildlife would be “negligible.” 33 U.S.C. § 2283(d)(1). To ensure that this happens, the Corps is prohibited from selecting a “project alternative in any report” unless that report includes a “specific plan to mitigate fish and wildlife losses.” *Id.* Accordingly, the draft SEIS must include a specific mitigation plan.

Corps mitigation plans must ensure that “impacts to bottomland hardwood forests are mitigated in-kind and harm to other habitat types are mitigated to not less than in-kind conditions, to the extent possible.” 33 U.S.C. § 2283(d)(1). Mitigation plans “shall include, at a minimum:”

- (1) The type, amount, and characteristics of the habitat being restored, a description of the physical actions to be taken to carry out the restoration, and the functions and values that will be achieved;
- (2) The ecological success criteria, based on replacement of lost functions and values, that will be evaluated and used to determine mitigation success;
- (3) A description of the lands and interest in lands to be acquired for mitigation, and the basis for determining that those lands will be available;
- (4) A mitigation monitoring plan that includes the cost and duration of monitoring, and identifies the entities responsible for monitoring if it is practicable to do so (if the responsible entity is not identified in the monitoring plan it must be identified in the project partnership agreement that is required for all Corps projects). Corps mitigation must be monitored until the monitoring demonstrates that the ecological success criteria established in the mitigation plan have been met; and
- (5) A contingency plan for taking corrective action in cases where monitoring shows that mitigation is not achieving ecological success as defined in the plan. 33 U.S.C. § 2283(d).

Corps mitigation plans must also comply with “the mitigation standards and policies established pursuant to the regulatory programs” administered by the Corps. 33 U.S.C. § 2283(d).

Corps mitigation must be monitored until the monitoring demonstrates that the ecological success criteria established in the mitigation plan have been met. The Corps is also required to consult yearly on each project with the appropriate Federal agencies and the states on the status of the mitigation efforts. The consultation must address the status of ecological success on the date of the consultation, the

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<sup>226</sup> 40 C.F.R. § 1502.14.

<sup>227</sup> The Water Resources Development Act of 2007 requires the Corps to implement mitigation, and comply with mitigation planning requirements, for any project for which the Corps “select[s] a project alternative in any report.” 33 U.S.C. § 2283(d). Thus, mitigation will be required for the Project as a matter of law upon issuance of the final SEIS, and mitigation is required as a matter of law for components of the Regulating Works Project that are proceeding under environmental assessments.



likelihood that the ecological success criteria will be met, the projected timeline for achieving that success, and any recommendations for improving the likelihood of success. 33 U.S.C. § 2283(d).

In addition, mitigation lands for Corps civil works projects must be purchased before any construction begins. 33 U.S.C. § 2283(a). Any physical construction required for purposes of mitigation should also be undertaken prior to project construction but must, at the latest, be undertaken “concurrently with the physical construction of such project.” *Id.*

#### **H. The SEIS Must Undergo Independent External Peer Review**

The SEIS must be reviewed under the Independent External Peer Review (IEPR) process established by the Water Resources Development Act of 2007. 33 USC 2343. We strongly urge the Corps to immediately initiate the IEPR process and contract with the National Academies to carry out the IEPR for the SEIS.

The SEIS clearly triggers mandatory IEPR under this provision as it evaluates a civil works project that will cost well over \$200 million and that is unquestionably highly controversial. 33 USC 2343(a). The project clearly satisfies both of the IEPR controversy triggers as: “there is a significant public dispute as to the size, nature, or effects of the project” and “there is a significant public dispute as to the economic or environmental costs or benefits of the project.” 33 USC 2343 (a)(4).

As the Corps is well aware, “in all cases” the IEPR review must be carried out concurrently with the project study and must be completed “not more than 60 days after the last day of the public comment period for the draft project study,” unless the Chief of Engineers determines that more time is necessary. 33 USC 2343(b) and 2343(d). The Corps provides IEPR plans online, and is required by law to provide the public with information on the timing of the IEPR, the entity that has the contract for the IEPR review, and the names and qualifications of the IEPR panel members. 33 USC 2343(c).



## Conclusion

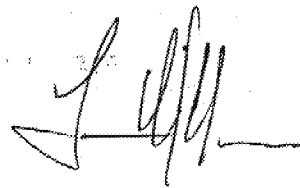
That Yazoo Pumps are prohibited by the 2008 Clean Water Act Final Determination and may not be—and should not be—constructed. The Conservation Organizations urge the Corps to abandon its misguided efforts to build the destructive and dangerous Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable, and immediate flood risk reduction benefits to impacted communities in the Yazoo Backwater Area while restoring this ecologically critical region—including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

Please contact Jill Mastrototaro with Audubon Mississippi ([Jill.Mastrototaro@audubon.org](mailto:Jill.Mastrototaro@audubon.org), 504-481-3659) or Olivia Dorothy with American Rivers ([odorothy@americanrivers.org](mailto:odorothy@americanrivers.org), 217-390-3658) if you have any questions or would like additional information.

Respectfully submitted,



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Deputy Legislative Director  
**Sierra Club**



## Attachment A

Conservation Organizations Scoping Comments in Response to  
Notice of Intent to Prepare Supplemental Environmental Impact Statement  
for the Yazoo Area Pump Project, 85 Fed. Reg. 21218 (April 16, 2020)



## A Resilience Alternative for the Yazoo Backwater Area

This document provides information on natural infrastructure and non-structural measures to reduce flood risks and increase community resilience in the Yazoo Backwater Area (YBWA) of Mississippi. Large-scale implementation of these measures can be achieved through the strategic use of federal programs that are currently funded, accepting proposals, and available to assist communities in the YBWA.

Flooding in the YBWA is primarily restricted to the lowest lying areas. From 1978 to 2018, water levels in the YBWA reached the 10-year floodplain elevation just 2 times, and never reached the 20-year floodplain elevation.<sup>1</sup> During the unprecedented flooding in 2019, water levels in the YBWA were primarily restricted to the 20-year floodplain, rising less than a quarter of an inch into the 25-year floodplain for 8 days before receding.

Wetlands in the YBWA play an essential role in minimizing flood damages, providing vital habitat to hundreds of species of fish and wildlife, and supporting wildlife-related recreation. Recognizing these many benefits, the George W. Bush Administration acted to protect 67,000 acres of the YBWA's ecologically significant natural wetland infrastructure by issuing a Clean Water Act 404(c) Final Determination for the Yazoo Backwater Pumping Plant.<sup>2</sup> This 2008 action paved the way for the long-term protection of an additional 53,300 acres of YBWA wetlands through conservation easements and other voluntary mechanisms. These protected wetlands safeguard YBWA communities by storing tens of billions of gallons of floodwaters.

The following sections recommends areas where investment in natural infrastructure and non-structural measures would provide important flood risk reduction benefits and and increase resilience in the YBWA. It also provides information on federal programs that implement those measures.

### Federal Programs Available to Reduce Flood Risks and Increase Resilience in the Yazoo Backwater Area

Numerous federal programs are currently funded, accepting proposals, and available to advance the large-scale use of natural infrastructure and non-structural measures to reduce flood risks and increase resilience in the YBWA. These programs, and targets for their use, are outlined below. Successful deployment of these programs will require robust engagement with YBWA communities and collection of the data and information outlined in Section II.

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<sup>1</sup> This period of record follows completion of the Yazoo Backwater Area Levee in 1978. By comparison, flooding in the YBWA reached 101.48 feet in 1973, which is well above the 100 year floodplain elevation. [U.S. Army Corps of Engineers Rivergages Website](#).

<sup>2</sup> While the 2019 flooding has prompted a renewed push for the Yazoo Pumps, preliminary Corps of Engineers' data shows that at least 68% of lands flooded in 2019 would have remained flooded if the Yazoo Pumps had been built and able to operate.



Reducing Flood Risks and Improving Resilience in the Yazoo Backwater Area Federal Programs Currently Funded and Accepting Proposals				
Federal Program	Structures	Agricultural Lands	Community Facilities	Roads, Bridges Utility Systems
Wetland Reserve Easements (WRE) USDA		✓		
Floodplain Easement Program USDA	✓	✓		
Hazard Mitigation Grant Program (HMGP) FEMA – Post-Disaster Recovery	✓		✓	✓
Community Facilities Grant Program USDA – Post-Disaster Recovery	✓		✓	
Pre-Disaster Mitigation Program (PDM) FEMA – Pre-Disaster Mitigation	✓		✓*	✓
Flood Mitigation Assistance (FMA) FEMA – Pre-Disaster Mitigation	✓		✓*	✓

\*With some limitations. Additional programs, including the FEMA Community Development Block Grants-Disaster Recovery Program, could become available through supplemental appropriations.

Effective implementation of these programs would add to the region's rich natural resource base and create more resilient communities. These benefits could be amplified by an innovative marketing campaign to drive wildlife and cultural heritage-associated tourism to the YBWA developed in collaboration with the Mississippi Delta National Heritage Area, the Delta Blues Trail, the Delta National Forest, and the Theodore Roosevelt National Wildlife Refuge Complex. The Delta Interpretive Center, which will be housed in the newly constructed Theodore Roosevelt Wildlife Refuge Visitor Center, could be a centerpiece of this effort.<sup>3</sup> Funding for such a campaign could be sought through the Mississippi Delta National Heritage Area Grant Program.<sup>4</sup>

Diversifying the economy of the YBWA in this manner would assist in arresting and reversing the region's economic decline. In 2011, state residents and nonresidents spent \$2.63 billion on wildlife recreation in Mississippi. Of that total, \$650 million was spent on trip-related expenditures, \$1.7 billion

<sup>3</sup> The Theodore Roosevelt Wildlife Refuge Visitor Center is "one of the most significant investments in tourism infrastructure" in the Delta.

<sup>4</sup> The Mississippi Delta National Heritage Area, which includes all the YBWA counties, was established by Section 8008 of the Omnibus Federal Land Management Act of 2009, Pub. L. 111–11 (16 USC 461 note) to preserve and promote the landscape, culture and history of the Mississippi Delta. Section 8008 authorizes appropriations of up to one million dollars a year through 2024, and establishes a management authority and a local coordinating entity to assist local governments, regional planning organizations, and nonprofit organizations in developing recreational and educational opportunities in the Heritage Area and increasing public awareness of, and appreciation for, natural, historic, scenic, and cultural resources of the Heritage Area.



was spent on equipment, and \$268 million was spent on licenses, leases, and other items. U.S. Fish and Wildlife Service, 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, Table 47. The demand for wildlife-related recreation is increasing nationwide, and directing more of this demand to the YBWA could produce significant economic benefits.

## 1. Wetland Reserve and Floodplain Easement Programs (USDA)

**Target:** Enroll at least **70,000 acres** of Yazoo Backwater Area lands in the Wetland Reserve Easement and Floodplain Easement Programs managed by the U.S. Department of Agriculture. Wetland reserve easements should target marginal croplands (those with 4W+ soils) adjacent to existing conservation lands, and marginal croplands inundated during the 2019 floods. Floodplain easements should target those same lands and/or frequently flooded residential properties, particularly “severe repetitive loss” and “repetitive loss” properties as defined by the Federal Emergency Management Agency.

**Responsible Federal Agency and Partners:** U.S. Department of Agriculture (Natural Resources Conservation Service) working with local landowners, homeowners, and non-governmental organizations.

**Funding:** Both programs are currently funded and accepting proposals for enrollment.

**Benefits:** Natural infrastructure is highly effective at reducing flood and storm risks for communities. Extensive public benefits include significantly reducing flood risks and emergency response costs, creating safer and healthier communities, and restoring vital floodplain habitat. A single acre of wetland can store 1.5 million gallons of floodwater. Wetlands purify water supplies, reduce nutrient loading into streams and rivers, and recharge groundwater supplies. Wetlands provide vital wildlife habitat, and restoring bottomland hardwood wetlands in the YBWA is a priority for achieving the forest bird population goals for the Lower Mississippi Valley Joint Venture. Protecting and restoring floodplain wetlands can significantly lower federal flood insurance rates for communities participating in the National Flood Insurance Program Community Rating System. Restoring enrolled lands creates jobs and economic outputs. Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. Landowners receive direct payments for enrolling their lands.

### Wetland Reserve Easement Program (WRE):

- Cropped and forested lands can be enrolled in WRE. Enrolled lands are taken out of agricultural production and restored to wetlands.
- Enrollment provides direct payments to landowners, currently up to \$3,100 per acre. USDA also pays to restore the enrolled lands. Landowners can make additional profits by selling or leasing the land for hunting, fishing, or other uses compatible with maintaining the restoration. Landowners may also be eligible for a tax deduction.
- 4W+ lands are classified by USDA as “severely limited” for agriculture because they are saturated at least 50% or more of the growing season. Because of these limitations, the 2014 Farm Bill exempted 4W+ lands from WRE enrollment caps. 4W+ lands also do not count towards county-wide WRE caps.
- **More than 296,000 acres** in the YBWA are classified by USDA as 4W+ lands, and as a result could be enrolled in WRE. In 2019, **62,042 acres** of 4W+ lands were inundated in Issaquena, Sharkey, and Warren counties. Most 4W+ lands in the YBWA **adjoin existing conservation lands**.



- Detailed GIS-based information on 4W+ soils and conservation lands in the YBWA is provided in the Conservation Organization Scoping Comments.
- The WRE program is extremely popular in Mississippi. At least 186,000 acres have been enrolled in the WRE program in Mississippi (in both the Wetlands Reserve Program and WRE programs which are now combined), and there is strong interest in enrolling more acres into the program.

#### Floodplain Easements:

- Both cropland and residential properties may be enrolled in the USDA Floodplain Easement program. Cropped lands are taken out of agricultural production and restored. Structures located within the area of a floodplain easement are demolished and removed, or relocated outside of the affected floodplain, and the lands are then restored.
- Enrollment provides direct payments to landowners, currently up to \$3,100 per acre. USDA pays to restore the enrolled lands. USDA also pays the costs of demolishing and removing, or relocating structures out of the affected floodplain. Landowners can make additional profits by selling or leasing the land for hunting, fishing, or other uses compatible with maintaining the restoration. Landowners may also be eligible for a tax deduction.
- A significant amount of funding is currently available for the purchase of floodplain easements in Mississippi (and numerous other states).

#### Additional Information:

- **Easement Payment Schedule:** In Mississippi, payments for enrolling lands in the WRE and Floodplain Easement Programs are the same. Easement purchase prices on forested land are slightly less than on cropland. The payment schedule is established by USDA on a yearly basis and may fluctuate slightly from year to year.
- **Agency Capacity:** Enrolling 70,000 acres of easements would be facilitated by adding staff capacity within the USDA Natural Resources Conservation Service to assess and process easement proposals.
- **Jobs and Economic Activity:** Restoration work associated with easement enrollment would create jobs. In Mississippi, the Fish and Wildlife Service Partners for Wildlife Program created 29.7 jobs for each million dollars spent on restoration, and \$1.63 of economic activity for each dollar spent on restoration in FY2011. U.S. Fish and Wildlife Service, *The Contribution of Partners for Fish and Wildlife Program and Coastal Program Restoration Projects to Local U.S. Economies* (September 2013) at 18.
- **Groundwater Recharge:** Restoring enrolled lands would provide critically important groundwater recharge benefits to the YBWA. Irrigation in the Mississippi Delta, including the YBWA, has caused some of the most severe groundwater declines in the United States and highly damaging low-flow conditions in many Delta streams. Recent studies demonstrate the significant value of wetlands to groundwater recharge in the YBWA. Ying Ouyanga, et al., *Estimating impact of forest land on groundwater recharge in a humid subtropical watershed of the Lower Mississippi River Alluvial Valley*, Journal of Hydrology: Regional Studies 26 (2019) 100631 (wetlands in the lower Yazoo River Basin provide the highest rates of groundwater recharge while agricultural lands provide the lowest rates); Michael Gratzer, et al., *Quantifying Recharge to the Mississippi River, Valley Alluvial Aquifer from Oxbow Lake-Wetland Systems*,



(2017) (oxbow lake wetlands near Belzoni, MS produce “significant vertical recharge” into the Mississippi River Valley Alluvial Aquifer).

- **National Flood Insurance Program Rate Reductions:** Protecting floodplains has the largest impact on lowering National Flood Insurance Program (NFIP) rates for communities participating in the voluntary Community Rating System Program (CRS). Participation in the CRS can reduce NFIP rates from 15% to 45%. The CRS credits over 90 elements of comprehensive floodplain and watershed management, including providing significant credits for protecting the natural functions of riverine floodplains by preserving natural floodplain open space, acquiring flood-prone land and returning it to its natural state, and protecting and restoring natural floodplain functions and habitat.
- **Cost Avoidance Benefits:** Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. A recent study documents these avoidance benefits (present value of avoided costs less the Wetlands Reserve easement and restoration costs) in Mississippi at \$870 per acre. *Wetland Reserve Easement Program Economic Assessment: Estimated Commodity Program and Crop Insurance Premium Subsidy Cost Avoidance Benefits*, Prepared for the Nature Conservancy (June 2, 2018) (authored by retired U.S. Department of Agriculture economist Dr. Doug Lawrence).
- **Ad Valorem Tax Offsets:** To offset potential losses of ad valorem taxes that could result from placing YBWA county cropland under easements, landowners (or through enactment of legislation, USDA) could make a one-time payment to the county as easements are enrolled equal to a very small percentage of the cost of the easement. The county could then place the funds in trust and draw upon the interest of the trust to offset losses in ad valorem taxes.

## 2. Pre-Disaster Mitigation Programs (FEMA)

**Target:** Significantly expand pre-disaster mitigation planning and protection in the YBWA to reduce the risk of damage from future high water events and increase community resilience, and provide free Flood Risk Management Workshops in the YBWA for interested parties.

**Responsible Federal Agency and Partners:** Federal Emergency Management Agency working with the State of Mississippi, local governments, and non-governmental organizations.

**Funding:** FEMA’s Pre-Disaster Mitigation Grant Program and Flood Mitigation Assistance Programs are currently funded and accepting proposals. FEMA will provide free Certified Floodplain Management training upon request.

**Benefits:** Significant public benefits through creation of safer communities by improving resiliency, eliminating impacts of future flood events, and providing long-term solutions to flooding problems. Effective pre-disaster mitigation reduces loss of life and property damage from future floods, minimizes flood disaster disruptions, and allows more rapid recovery when flooding does occur. On average, \$1 spent on hazard mitigation through a federally funded mitigation grant saves \$6 in future disaster costs. Federal grants provide \$7 in benefits for each \$1 invested in riverine flood mitigation.



#### FEMA Pre-Disaster Mitigation Grant Program:

- The Pre-Disaster Mitigation (PDM) program provides funding to states, tribes, and local governments to reduce overall risk to the population and structures from future hazard events while also reducing reliance on federal funding to recover from future disasters. The PDM program typically covers up to 75% of eligible activity costs, but small and impoverished communities may be eligible for coverage of up to 90% of eligible costs.
- Following this current funding cycle, the PDM program will transition into the Building Resilient Infrastructure and Communities (BRIC) program established by the Disaster Recovery Reform Act of 2018. The BRIC program will be funded through a 6% equivalency set-aside of all disaster expenditures from the Disaster Relief Fund. This should significantly increase the amount of funding available for pre-disaster mitigation efforts.
- FEMA has \$250 million available for distribution under the PDM program for FY19. The deadline for submitting requests under this cycle is January 31, 2020.

#### FEMA Flood Mitigation Assistance Program:

- The Flood Mitigation Assistance (FMA) Program provides funding to states, tribes, and local governments to reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program. FMA funding may cover up to 100% of costs to address severe repetitive loss properties and up to 90% of costs to address repetitive loss properties. Other activities will be funded up to 75%.
- FEMA has \$70 million available for distribution under the FMA program for FY19. The deadline for submitting applications under the current cycle is January 31, 2020.

#### Free Certified Floodplain Management Training:

- FEMA can provide free Flood Risk Management Workshops and Certified Floodplain Manager (CFM) Exams to equip participants with important information on reducing flood risks and career skills. The CFM program seeks to reduce flood risk for people and encourage flood resilient development through multi-benefit floodplain management. The CFM program seeks to reduce flood risk for people and encourage flood resilient development through multi-benefit floodplain management. Trainings include information on the National Flood Insurance Program, including its history, standards, regulations and administration; floodplain mapping; flood hazard mitigation; and floodplain management for environmental benefits. FEMA could also provide additional relevant trainings in the YBWA through its Integrated Emergency Management Course.
- The NGO community could work with foundations and others to obtain scholarship funding to defray out-of-pocket costs for attendees, including travel expenses, lost wages, and daycare.
- The state, local governments, or others could request that FEMA provide free Flood Risk Management Workshops at locations in the YBWA.

### 3. Post-Disaster Recovery Programs (FEMA, USDA, HUD)

Target: Prioritize disaster recovery funds to voluntary buy-outs and elevations of “severe repetitive loss” and “repetitive loss” properties in the YBWA, and improve essential community infrastructure. Key targets include the **198** severe repetitive loss properties in Issaquena and Sharkey counties (150 in Issaquena, 48 in Sharkey), and any of the **1,191** severe repetitive loss properties located in the YBWA



portions of Warren, Washington, and Humphreys counties (total severe repetitive loss properties are 833 in Warren, 314 in Washington, 44 in Humphreys).

**Responsible Federal Agencies and Partners:** Federal Emergency Management Agency, U.S. Department of Agriculture, U.S. Department of Housing and Urban Development (depending on program used), working with the State of Mississippi, local governments, property owners, and residents.

**Funding:** The FEMA Hazard Mitigation Grant Program is currently funded and may be accepting applications for the YBWA. The USDA Community Facilities Grant Program is currently funded and accepting applications. Supplemental appropriations targeted to the YBWA would be required to take advantage of the HUD Community Development Block Grants – Disaster Recovery program.

**Benefits:** Significant public benefits, including reducing flood risks and emergency response costs, creating safer and healthier communities, and restoring vital floodplain habitat. Increasing the resilience of roads and other community infrastructure improves community well-being and supports economic development. Homeowners are compensated for moving out of harm's way or elevating homes and other structures to avoid future flood damages.

**FEMA Hazard Mitigation Grant Program (HMGP):**

- The HMGP provides grants to state and local governments in areas covered by a Presidential disaster declaration. These grants can be used to purchase flood-damaged properties from willing sellers at pre-flood values and preserve the land as open space, or to elevate structures.
- The YBWA is eligible for HMGP grants through the April 23, 2019 Federal Disaster Declaration 4429, which made FEMA's HMGP available to the entire state of Mississippi. This Disaster Declaration was most recently amended on September 20, 2019. FEMA accepts HMGP applications for **one year** after a federal disaster declaration with the possibility of up to a 180-day extension at the state's request.
- Any structure in the 100-year floodplain (*i.e.*, a Special Flood Hazard Area) valued at up to \$276,000 automatically qualifies for a FEMA-funded buy-out, and any structure in a Special Hazard Area valued at up to \$175,000 automatically qualifies for a FEMA-funded elevation. Other structures may also qualify if a benefit-cost analysis shows that a buy-out or elevation would be cost-effective.
- FEMA has funded **638 buy-outs in Mississippi, including 105 in Warren County**, since the 1980s.

**USDA Community Facilities Grant Program:**

- The USDA Community Facilities Grant Program provides grants to rural communities with up to 20,000 residents in areas covered by a Presidential disaster declaration. Funding under this grant program can be used to advance more than 100 types of projects, including the purchase, construction, or improvement of essential community facilities. Essential community facilities include such things as health care facilities, town halls, courthouses, community centers, fairgrounds, police and fire departments, libraries, museums, and food banks.
- USDA recently announced the availability of \$150 million to fund grants under this program.

**HUD Community Development Block Grants – Disaster Recovery (CDBG-DR):**

- CDBG-DR grants supplement FEMA disaster recovery funds to help cities, counties, and states recover from Presidentially-declared disasters, especially in low-income communities. Activities funded through these flexible grants must meet one of three national objectives: benefit low-



and-moderate-income persons; aid in the prevention or elimination of slums or blight; or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

- Mississippi is currently finishing up two CDBG-DR grants for Hurricane Katrina recovery (\$5.06 billion and \$423 million) and a third CDBG-DR grant for recovery from the storms of 2008 (\$11.7 million), and appears to have some unspent monies remaining.
- The Bipartisan Budget Act of 2018 approved \$12 billion in funding for a new Community Development Block Grant disaster fund focused on helping CDBG-DR grant recipients “carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses” including among many other things, supporting data-informed investments in high-impact mitigation projects, building state and local government capacity for comprehensively analyzing disaster risks, and supporting the adoption of policies that minimize future disaster costs. While Mississippi has not received an allocation under this fund to date, a second round of allocations will be taking place and future appropriations are likely.
- CDBG-DR grants require supplemental appropriations to HUD. Advocating for CDBG-DR funding for the YBWA could result in a significant source of additional funding to assist in recovery.

#### Additional Information:

- **Disaster Declaration:** The April 23, 2019 Federal Disaster Declaration 4429 made FEMA’s HMGP applicable to the entire state of Mississippi. Multiple amendments were made to that declaration, with the last amendment issued on September 20, 2019. The Mississippi Emergency Management Agency has clarified that the declaration covers the 2019 YBWA flood.
- **Severe Repetitive Flood Loss Properties:** “Severe repetitive loss properties” are properties covered by the National Flood Insurance Program that have flooded repeatedly and are priorities for elevation or removal. These structures, which are mostly homes, have been the subject of four or more damage claims of more than \$5,000 each, or two or more claims in which the insured structure sustained cumulative damage exceeding its fair market value. FEMA can provide the precise number of severe repetitive loss properties within the YBWA.
- **Repetitive Flood Loss Properties:** “Repetitive loss properties” are properties covered by the National Flood Insurance Program that have flood-related damage on two occasions where the cost of the repair equaled or exceeded 25% of the market value of the structure at the time of each such flood event; and the second incidence of flood-related damage increased the cost of flood-insurance compliance coverage. FEMA can provide the precise number of repetitive loss properties within the YBWA.
- **Typical Timeline for FEMA Buy-Outs:** Approximately 70% of FEMA buy-out projects are approved within two years of the associated disaster. More than half of all buyout projects have taken more than 5 years to closeout. NRDC, *Going Under: Long Wait Times for Post-Flood Buyouts Leave Homeowners Underwater* (September 2019).
- **History of FEMA Buy-Outs:** Since the 1980s, FEMA has funded 638 buy-outs in Mississippi, including 105 in Warren County. In all, FEMA has funded the buy-out of more than 43,360 properties through 3,839 “projects” in 49 states. Of these properties, 96% suffered from river flooding or intense rains, while 4% suffered from coastal flooding. The HMGP has funded 96%



of all FEMA buy-outs. Buy-outs disproportionately occur in white communities rather than communities of color, according to a 2019 NPR investigation. For example, after the 2008 floods in Iowa, “households in high social vulnerability areas were less likely to obtain full financial compensation” from federally funded buyout programs and waited longer to receive acquisition funds. NRDC, *Going Under: Long Wait Times for Post-Flood Buyouts Leave Homeowners Underwater* (September 2019) at 10, 8, 6.



**FOR IMMEDIATE RELEASE:** June 16, 2020

**CONTACT:**

Audubon Mississippi - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)

Mississippi Sierra Club - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)

Healthy Gulf - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)

American Rivers - Olivia Dorothy, (217) 390-3658, [odorothy@americanrivers.org](mailto:odorothy@americanrivers.org)

Mississippi River Network - Kelly McGinnis, (708) 305-3524, [kmcginnis@1mississippi.org](mailto:kmcginnis@1mississippi.org)

**Conservation and Public Interest Groups Call for Immediate, Effective Flood Relief Solutions for Mississippi Delta Communities**  
*Corps urged to abandon wasteful, destructive Yazoo Pumps*

**JACKSON, Miss.** – Yesterday marked the public comment deadline on the U.S. Army Corps of Engineers (Corps) intent to prepare a Supplemental Environmental Impact Statement for a massive drainage project in Mississippi's South Delta commonly known as the Yazoo Pumps. The \$440 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.

"From conservation organizations to conservative taxpayer groups, there is a resounding call for the Corps to abandon this antiquated, ineffective project," **said Jill Mastrototaro, Policy Director for Audubon Mississippi.** "Instead the Corps should pursue proven flood relief solutions that can deliver immediate, affordable, and effective benefits to affected South Delta communities while also restoring this ecologically-critical region."

Over 100 national, state and local conservation, environmental, faith, recreation, and public interest organizations representing millions of members and supporters joined the **Mississippi River Network** in delivering a letter to the Corps reinforcing this urgent message. [\[View this letter.\]](#)

Thirty-eight thousand concerned Mississippians and Americans from across the country accompanied this broad chorus by sending electronic letters to the Corps.

"The Corps' unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust," **said Andrew Whitehurst, Water Program Director for Healthy Gulf.** "The Corps is attempting to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable."

Although Congress authorized the Yazoo Pumps theoretically to provide flood control, in 2007 the Corps determined that 80 percent of the project's benefits would be for agriculture. Corps analyses during the 2019 flood event reinforced these findings.

"The Corps' stunning admission that 68 percent of the Yazoo Backwater Area would still be under water even with the Pumps says it all," **said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club.** "The Pumps are not intended to protect communities from flooding but are designed to benefit agribusiness by draining wetlands to intensify farming."



“The good news for Yazoo Backwater communities is that federal programs are available now to provide relief and cost-effective protections for people’s lives, property and livelihoods,” **said Olivia Dorothy, Upper Mississippi River Basin Director for American Rivers.** “The Corps should deploy flood risk reduction measures that are being embraced by communities throughout the Mississippi River basin, such as elevating homes, voluntary buyouts, and paying farmers to restore cropland back to wetlands.”

These federal programs include the Federal Emergency Management Agency’s National Flood Insurance and Flood Mitigation Assistance Grant Programs, U.S. Department of Housing and Urban Development’s post-disaster programs, and U.S. Department of Agriculture’s voluntary conservation programs.

## Resources:

- [Comment letter submitted to the Corps by 109 national, state and local conservation, environmental, faith, recreation, and public interest organizations](#)
- [Technical comment letter submitted to the Corps by several conservation organizations](#)
- [Alternative Flood Relief Solutions to the Yazoo Pumps](#)
- [Corps of Engineers 2019 March Inundation Map of the Yazoo Backwater Area](#) *(Note: BLUE on map shows 347,000 acres of 512,000 acres that were under water in March 2019 would still continue to flood even with the Yazoo Pumps in place.)*
- [Federal Register Notice publishing the Corps of Engineers’ Notice of Intent to prepare a Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area](#)

# # #



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 8/3/2020 12:48:23 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Yazoo

In that window, I could do 1:00-1:30.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, August 3, 2020 8:34 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** RE: Yazoo

Sure. I am open from Noon till Senior Staff at 2:00 pm.

---

**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Monday, August 3, 2020 8:10 AM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Yazoo

Hi David and Lee,

Would you have a few minutes for me to discuss Yazoo with you? If you're open, I'll ask Belinda to work a brief call for the three of us – certainly not more than 15-20 minutes.

Thanks  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

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**From:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Sent:** 6/1/2020 2:13:06 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** RE: For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Thank you!  
Janita

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**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

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**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Monday, June 01, 2020 10:12 AM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Subject:** RE: For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Janita,

As discussed at staff meeting, attached is an updated doc that now includes 401 updates ready for Dave.

---

**From:** Spraul, Greg  
**Sent:** Wednesday, May 27, 2020 4:22 PM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Subject:** For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Janita,

As discussed at staff meeting yesterday, attached are responses to OMB/interagency comments on Dave responses to the QFRs from the Sept 2019 T&I hearing in redline. The major updates are to DHC/Maui on page 9 and CWA 311 from OLEM on page 13. The rest of the comments are minor. The responses were cleared according to the following assignments. Once Dave clears, OCIR will send back to OMB and once OMB clears, these can go to T&I through OCIR. If 401 goes final in the near term, we can easily update with edits I already have from Anna.

1. DeFazio WOTUS (pages 1-6) – Owen
2. DeFazio DHC (pages 8 and 9) – Fotouhi (Anna asked for OGC to update)



3. DeFazio Blending (page 9 and 10) – Charlotte
4. DeFazio PFAS (pages 10 and 11) – Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna
6. DeFazio Yazoo (pages 12 and 13) – Lee
7. Fletcher CWA 311 (pages 13 and 14) - OLEM
8. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen
9. Johnson 3 401 (page 16) – Anna
10. Graves 1 – WA WQS (pages 16 and 17) – Anna

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 6/1/2020 2:12:08 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** RE: For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_06-01-20.docx

Janita,

As discussed at staff meeting, attached is an updated doc that now includes 401 updates ready for Dave.

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**From:** Spraul, Greg  
**Sent:** Wednesday, May 27, 2020 4:22 PM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Subject:** For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

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8. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen
9. Johnson 3 401 (page 16) – Anna
10. Graves 1 – WA WQS (pages 16 and 17) – Anna

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255







Message

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**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 12/5/2020 6:13:32 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: Conservation Orgs Materials on Yazoo Pumps Draft SEIS  
**Attachments:** Conservation Organization Comments\_Yazoo Pumps DSEIS\_Final\_11-30-20.pdf; Fleenor\_CV.pdf

Pls handle.

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Tuesday, December 1, 2020 11:30 AM  
**To:** Ross, David P <ross.davidp@epa.gov>  
**Subject:** Conservation Orgs Materials on Yazoo Pumps Draft SEIS

Good Morning, Mr. Ross,

I wanted to share with you a package of materials that Audubon and several partners submitted into the public record yesterday regarding the Corps' October 2020 Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Backwater Pumps.

- [11/30/20 Press Release highlighting our main concerns with the DSEIS \(below\)](#)
- Technical comments submitted by Conservation Organizations to the Corps (attached); [Downloadable here with 15 supporting Appendices](#). **EPA may be particularly interested in Appendix E which presents an analysis of the Corps' HEC-RAS 1D Model**; Dr. Fleenor's CV is attached.
- [Comment letter submitted by 114 science professionals to the Corps](#)
- [Comment letter submitted by 123 national, state and local conservation, faith-based, social justice, and recreation organizations to the Corps](#)

These letters call on the Corps to abandon the destructive, ineffective, and long-vetoed Yazoo Pumps proposal and withdraw the deeply flawed DSEIS. Instead, the Corps is urged to advance Immediate-Affordable-Effective flood risk solutions that will protect local communities and restore this ecologically critical region -- including measures outlined in the proposed Resilience Alternative that accompanies the technical comments.

Notably, [over 55,000 concerned Mississippians and Americans from across the country](#) sent emails to the Corps reinforcing this crucial message.

In closing, we strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

I hope this information is helpful to you. Please do not hesitate to reach out with questions or for more details.

Kind regards,

Jill

**FOR IMMEDIATE RELEASE:** November 30, 2020

**CONTACT:**



*American Rivers* - Olivia Dorothy, (217) 390-3658, [odorothy@americanrivers.org](mailto:odorothy@americanrivers.org)  
*Audubon Mississippi* - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)  
*Healthy Gulf* - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)  
*Mississippi River Network* - Kelly McGinnis, (708) 305-3524, [kmcginnis@1mississippi.org](mailto:kmcginnis@1mississippi.org)  
*Mississippi Sierra Club* - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)

## **55,000+ Citizens, Scientists, and Public Interest Groups Call for Effective Flood Relief Solutions for Mississippi Delta on Eve of Yazoo Pumps Deadline**

*Corps urged to abandon wasteful, destructive Yazoo Pumps*

**JACKSON, Miss.** – Today marks the public comment deadline on the U.S. Army Corps of Engineers’ (Corps) Draft Supplemental Environmental Impact Statement (EIS) for a massive drainage project in Mississippi’s South Delta commonly known as the Yazoo Pumps.<sup>1</sup> The \$500 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.<sup>2</sup>

“More than 55,000 citizens, scientists, and public interest groups from Mississippi and across the country have delivered a clear and decisive message to the Corps,” **said Kelly McGinnis, Executive Director of the Mississippi River Network.** “Mississippi Delta communities deserve real flood solutions, not the irresponsible, ineffective, and long-vetoed Pumps boondoggle.”

This broad chorus of opposition was further demonstrated in a pair of letters sent to the Corps from over 110 science professionals and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations representing millions of members and supporters.<sup>3, 4</sup>

“The Corps’ unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust,” **said Andrew Whitehurst, Water Program Director for Healthy Gulf.** “The Corps is trying to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable.”

Although Congress authorized the Yazoo Pumps in 1941 to theoretically provide flood control, in 2007 the Corps admitted that 80 percent of the project’s benefits would be for agriculture. The Corps’ Draft Supplemental EIS reinforces this finding<sup>5</sup> as well as its analysis during the 2019 Flood that 347,000 acres, or 68 percent, of the backwater area would remain flooded even with the Pumps in place.<sup>6</sup> Corps data obtained by conservation groups in November through a public records request indicate deficiencies exist with the Corps’ modeling and suggest the Pumps would be even less effective than Corps’ claims to-date.<sup>7</sup>

“Despite all the hype, the Corps’ latest study is proof positive that the Pumps are not designed to protect communities from flooding,” **said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club.** “Even at full operation the Pumps would leave, at best, 65 percent of flooded lands underwater and it would take weeks to months to drawdown floodwaters on the remaining backwater lands.”

“The Corps is proposing the same project using the same problematic methodologies that were decisively rejected by EPA in 2008,” **said Jill Mastrototaro, Policy Director for Audubon Mississippi.** “Not only does the draft study still find the Pumps will harm nearly 39,000 acres of wetlands, it blatantly ignores the litany of natural resource concerns raised in the veto as well as Audubon’s recent analysis that the Yazoo backwater supports 29 million migrating birds annually. This study is sloppy, incomplete, and scientifically unsound.”

“The Corps does not evaluate a single alternative to the vetoed Yazoo Pumps, despite repeated calls to consider flood risk reduction alternatives that could deliver immediate, affordable, and effective relief,” **said Olivia Dorothy, Certified Floodplain Manager and Upper Mississippi River Basin Director for American Rivers.** “The Yazoo Pumps will not protect people from flooding or reduce flood insurance rates. Commonsense natural infrastructure and non-structural approaches are available now to help protect people’s lives, property and livelihoods. These more reliable measures



include elevating homes, voluntary buyouts, and paying farmers to restore cropland back to wetlands. The Corps should prioritize these smart solutions for the Yazoo Backwater Area.”

Federally-funded programs that can provide flood relief alternatives to the Yazoo Pumps include the Federal Emergency Management Agency’s National Flood Insurance and Flood Mitigation Assistance Grant Programs, U.S. Department of Housing and Urban Development’s post-disaster programs, and U.S. Department of Agriculture’s voluntary conservation programs.<sup>8</sup>

## Resources:

- 1) [Federal Register Notice publishing the Corps of Engineers’ Draft Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area](#)
- 2) Adjusted for inflation. The Corps’ 2007 Final EIS estimated the Yazoo Pumps would cost \$440 million dollars to construct. The Corps has not provided an updated cost estimate in the 2020 Draft Supplemental EIS.
- 3) [Comment letter submitted to the Corps by 114 science professionals](#)
- 4) [Comment letter submitted to the Corps by 123 national, state and local conservation, faith-based, social justice, and recreation organizations](#)
- 5) [Draft Supplemental EIS, Appendix G \(Engineering\), at 123, Table 2-26](#)

*Table 2-26. Proposed Plan on Total Ponding Area Reductions*

Flood Frequency	Reduction in Stage	Reduction in Area	Reduction in Volume	Days to Lower Flood to 87 Feet	Change in Water Surface per Day
1-Year	0.67	17.4%	14.2%	1.8	0.34
2-Year	1.81	39.7%	35.8%	12.9	0.25
5-Year	2.78	36.1%	45.8%	32.7	0.18
10-Year	3.17	34.7%	45.9%	48.2	0.16
25-Year	3.34	35.1%	45.4%	64.3	0.14
50-Year	3.3	34.0%	43.1%	85.4	0.12
100-Year	3.12	32.0%	40.7%	99.7	0.11

- 6) U.S. Army Corps of Engineers, Mississippi Valley Division. “Yazoo Backwater Area Inundation Map With & Without Pump” [\[Link to map\]](#). 14 March 2019. (Note: BLUE on map shows 347,000 acres of 512,000 acres that were underwater in March 2019 (i.e., 68% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place.)
- 7) American Rivers. “Yazoo Backwater Area Inundation Map With & Without Pump” [\[Link to Map\]](#). November 30, 2020. (Note: Map was created using shapefiles and data provided by the Corps in November in response to a Freedom of Information Act request from conservation groups. BLUE on map shows 422,195 acres of 509,478 acres that were underwater at the peak of the 2019 Flood (i.e., 83% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place. This result indicates discrepancies in the Corps’ modeling that suggest the Pumps may be far less effective than the Corps’ claims to-date.)
- 8) [Alternative Flood Relief Solutions to the Yazoo Pumps](#)

###

---  
Jill Mastrototaro  
Policy Director



504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



Message

---

**From:** Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**Sent:** 12/11/2020 7:36:50 PM  
**To:** Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Martin, KarenL [Martin.KarenL@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: Yazoo Final Supplemental EIS Filed

Hi Everyone,

Hi Everyone,

EPA released a [Notice of Availability](https://www.mvk.usace.army.mil/missions/programs-and-project-management/project-management/yazoo-backwater-report/) in the *Federal Register* for the Final Supplement No. 2 to the 1982 Yazoo Area Pump Project Final Environmental Impact Statement today. The link below includes the final SEIS and accompanying appendices: <https://www.mvk.usace.army.mil/missions/programs-and-project-management/project-management/yazoo-backwater-report/>

The Corps response to public comments is listed under Appendix E. EPA's most recent comment letter is included near the beginning of the appendix and the response to agency comments begins on page 908. Please review the response to agency comments and provide any feedback you may have regarding responsiveness. Public comments are due on January 11, 2020.

Thanks,

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)

---

**From:** Kajumba, Ntale

**Sent:** Monday, December 7, 2020 9:07 AM

**To:** Blevins, John <Blevins.John@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif



<Palmer.Leif@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Ainslie, William <Ainslie.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Yesmant, Christopher <Yesmant.Christopher@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Buzzelle, Stanley <Buzzelle.Stanley@epa.gov>; Martin, KarenL <Martin.KarenL@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kajumba, Ntale <Kajumba.Ntale@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>  
**Subject:** Yazoo Final Supplemental EIS Filed

Hi Everyone,

The Corps has filed the Supplement No. 2 to the 1982 Yazoo Area Pump Project Final EIS with EPA. It should be published in the Federal Register by Friday, December 11, 2020. Comments are due on January 11, 2020. When we have additional information, our senior leaders will share that with you.

Thanks,

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 8/3/2020 12:09:43 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Yazoo

Hi David and Lee,

Would you have a few minutes for me to discuss Yazoo with you? If you're open, I'll ask Belinda to work a brief call for the three of us – certainly not more than 15-20 minutes.

Thanks  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



## Appointment

---

**From:** Johnson, Belinda [Johnson.Belinda@epa.gov]  
**Sent:** 10/14/2020 6:29:54 PM  
**To:** Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** Yazoo Draft FSEIS Discussion

**Location:** Teleconference Ex. 6 Personal Privacy (PP) iCode Ex. 6 Personal Privacy (PP)

**Start:** 10/15/2020 8:30:00 PM

**End:** 10/15/2020 9:00:00 PM

**Show Time As:** Tentative

**Required Attendees:** Bolen, Brittany; Forsgren, Lee; Fotouhi, David; Walker, Mary



Message

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/29/2020 11:24:05 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mlf markup-dlf.msw2.docx

Hi Lee, David, and Kevin

I hope you all had a wonderful Thanksgiving. I am checking in. Is there anything you'd have me add/edit re: Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP I'm attaching the document as it currently stands. I have continued to make small edits for tone – and

Ex. 5 AC/AWP/DP am down to the following considerations:

- Ex. 5 AC/AWP/DP ?
- Ex. 5 AC/AWP/DP My preference remains deleting it.
- Question – Ex. 5 Attorney Client (AC) Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP I think this should be something like Ex. 5 AC/AWP/DP but need to confirm this before I edit.
- I still really don't like Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP  
Ex. 5 AC/AWP/DP Will call Kevin in the morning.

Should we talk tomorrow or should I make decisions on the above and move to get this up to Mandy for review?

Thanks for all your help – and your folks help – on this letter,  
Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Saturday, November 28, 2020 5:24 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: yazoo

I am fine with taking it out.

Sent from my iPhone

On Nov 28, 2020, at 5:08 PM, Walker, Mary <walker.mary@epa.gov> wrote:

I have added a few/edited a bit. My main thought remains that: Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP I would prefer that Ex. 5 AC/AWP/DP Please let me know your thoughts.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Saturday, November 28, 2020 12:04 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Fwd: yazoo



Here are my comments.

Sent from my iPhone

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** November 28, 2020 at 11:32:00 AM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Subject:** RE: yazoo

Here are my comments. I don't expect to have any more.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Cc:** "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Subject:** Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488



On Nov 27, 2020, at 10:45 PM, Fotouhi, David  
<[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

- I understand the concern regarding **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**



## Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Neugeboren, Steven  
<[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** yazoo



David – we have prepared the attached paper that discusses a couple portions of the DEIS that **Ex. 5 AC/DP**

## **Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP** So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at **Ex. 6 Personal Privacy (PP)**

**Ex. 6 Personal Privacy (PP)**

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

<Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-dlf.msw.docx>



Message

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**From:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Sent:** 5/12/2020 9:13:25 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Attachments:** R4-1 MS Yazoo Pumps Feb 4 2020.docx

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)



## **2008 YAZOO PUMPS CLEAN WATER ACT SECTION 404(C) FINAL DETERMINATION (MISSISSIPPI)**

### **BACKGROUND:**

- The Yazoo Backwater Area Pumps Project is a U.S. Army Corps of Engineers (Corps) Civil Works project designed to address flooding concerns in a 630,000-acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi. The estimated \$200+ million project was to be fully federally funded with no local cost-share.
- Project construction and operation, under a range of alternatives evaluated in the Final Supplemental Environmental Impact Statement, would have adversely impacted between 28,400 and 118,400 acres of wetlands and other waters of the United States.
- In 2008, EPA determined that these impacts would result in unacceptable adverse effects on fishery areas and wildlife and vetoed the project under Clean Water Act (CWA) Section 404(c).
- In October 2019, at the request of **Sen. Wicker's** office, EPA's Deputy Assistant Administrator for Water, Lee Forsgren, and Regional Administrator Mary Walker participated in a listening session with residents in Rolling Fork, MS.
- In March 2019, then Acting Regional Administrator Mary Walker met with Corps General Richard G. Kaiser to tour the Yazoo Backwater Area and discuss the issue.
- In 2018, an unsuccessful rider would have directed the Corps to begin construction on the Yazoo pumps project despite the 2008 CWA Section 404(c) Final Determination.
- Currently, EPA is reviewing information received from the Corps in late December 2019 to determine next steps.

### **KEY POINTS:**

- **Sen. Roger Wicker (R-MS), Sen. Cindy Hyde-Smith (R-MS),** Rep. Bennie Thompson (D-MS) and former Governor Phil Bryant (R-MS) have all engaged with EPA on this issue (correspondence, meetings, calls) in support of the pump project.
- Dozens of residents have written to EPA in 2019 and 2020 in support of the pump project, while hunting, fishing and other conservation groups oppose the project because of its extensive impacts to wetlands providing important habitat for fish and wildlife. Tax-payer watchdog groups and economists question the flood reduction benefits of the proposed project and criticize it as wasteful.

### **TALKING POINTS:**

- The EPA recognizes the disruptive impacts of the recent flooding along the lower Mississippi River and the Yazoo Backwater Area on the day-to-day lives of Mississippians and the economy of the area.
- On October 21, 2019 we participated in a listening session where we had the opportunity to hear first-hand from residents. We have an ongoing dialogue with the U.S. Army Corps of Engineers regarding potential options for providing flood protection and are reviewing information received from the Corps in late December 2019.
- We remain committed to working actively and cooperatively with the Corps on the potential flood control options they are considering as they relate to our Clean Water Act programs. Our shared goal is to support a long-term, viable solution.



Message

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**From:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Sent:** 11/19/2020 11:53:58 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Automatic reply: Urgent Review: Revisions to version of Yazoo DSEIS letter sent to leadership on 11-17

Please note I am out of the office until Monday, Nov 30th. During this time, Palmer Hough will be acting chief on Friday, Nov 20th, Clay Miller will be acting chief on Monday - Wednesday, Nov 23 - 25th, and Dave Redford will be acting chief of the FMRB on Friday, Nov 27th. Clay can be reached at 202.365.1652; Dave can be reached at 202.596.0602. Be safe and happy holiday, Russ



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 5/19/2020 8:49:36 PM  
**To:** McDonough, Owen [mcdonough.owen@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_05-19-20.docx

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion, Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) but please review the other questions to see if you are ok with the interagency comments. In addition to Ex. 5 Deliberative Process (DP) the other big decision point is Ex. 5 Deliberative Process (DP)  
Ex. 5 Deliberative Process (DP) See which questions are yours to review below.

1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.
2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 10/19/2020 12:22:31 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Crawford, Tiffany [Crawford.Tiffany@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Kral, Garrett [kral.garrett@epa.gov]  
**Subject:** Agenda for 10/19 8:30am check in w/ OCIR

**INTERNAL/DELIBERATIVE**

Ex. 6 Personal Privacy (PP)

**GAO**

1. **Ex. 5 Deliberative Process (DP)**  
2.

**Congressional/Intergov**

3.  
4.  
5.  
6.  
7.  
8. **Ex. 5 Deliberative Process (DP)**  
9.  
10.  
11.  
12.  
13.  
14.  
15.



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/28/2020 10:08:01 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-dlf.msw.docx

I have added a few/edited a bit. My main thought remains that Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP I would prefer that Ex. 5 AC/AWP/DP Please let me know your thoughts.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Saturday, November 28, 2020 12:04 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Fwd: yazoo

Here are my comments.

Sent from my iPhone

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** November 28, 2020 at 11:32:00 AM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Subject:** RE: yazoo

Here are my comments. I don't expect to have any more.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Cc:** "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Subject:** Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the



document more thoroughly to ensure that:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

Ex. 5 AC/AWP/DP

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi, David  
<[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that:

Ex. 5 AC/AWP/DP

**Ex. 5 AC/AWP/DP**

- I understand the concern regarding

Ex. 5 AC/AWP/DP

**Ex. 5 AC/AWP/DP**



# Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Friday, November 27, 2020 8:50 PM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>  
**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.



But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at: Ex. 6 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488



Message

---

**From:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Sent:** 6/12/2020 3:59:01 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Sure. Give me 15 min I have something I need to shoot out for Brittany first

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
*Cell: Ex. 6 Personal Privacy (PP)*

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, June 12, 2020 11:45 AM  
**To:** Barger, Cindy <Barger.Cindy@epa.gov>  
**Subject:** Re: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Cindy can you call me on something else.

Sent from my iPhone

On Jun 12, 2020, at 11:43 AM, Barger, Cindy <Barger.Cindy@epa.gov> wrote:

Hi Lee – I'll let Rob give his independent feedback but OFA-NCD feels that with the assistance/review HQ provided to the R4 team, the attachment is a useful information to USACE scoping effort to stay in line with the scope of the NOI and support development of a quality document understanding the important timeline for this project to identify and implement a flood risk solution quickly for the community.

Hope that is helpful.

Thanks!  
Cindy

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
*Cell: Ex. 6 Personal Privacy (PP)*

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**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Friday, June 12, 2020 10:36 AM



**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE

Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won't speak for OFA, but my quick read of the crisp seven page attachment is that **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Thanks,  
John

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, June 12, 2020 10:25 AM  
**To:** Barger, Cindy <Barger.Cindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Can we do an evaluation of the letter with consistency with overall EPA direction.

---

**From:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Sent:** Friday, June 12, 2020 10:02 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Banister, Beverly <Banister.Beverly@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**  
NEPA Section, Chief



Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



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Hunters Point Naval Shipyard, CA .....	R9-3
Iron Mountain Mine, CA .....	R9-4
Orange County North Basin, CA .....	R9-5
McClellan Air Force Base, CA .....	R9-6

## **Region 10 Issues**

Portland Harbor, OR .....	R10-1
Bradford Island, OR .....	R10-2
Columbia River NPDES Permits, WA .....	R10-3
Eielson Air Force Base, AK .....	R10-4
Fairchild Air Force Base (4 Waste Areas) Including Airway Heights, WA .....	R10-5
Fish Grinding, AK .....	R10-6
Gay Mine, ID .....	R10-7
Hanford, WA .....	R10-8
Upper Columbia River, WA .....	R10-9
Whidbey Island, WA .....	R10-10
Fairbanks PM 2.5, AK .....	R10-11
Small Remote Incinerators .....	R10-12
Puget Sound, WA .....	R10-13



## **Member Bios**

### Senate Committee on Environment and Public Works

Chairman John Barrasso .....	EPWREP-1
Senator Jim Inhofe .....	EPWREP-2
Senator Shelley Moore Capito .....	EPWREP-3
Senator Kevin Cramer.....	EPWREP-4
Senator Mike Braun .....	EPWREP-5
Senator Mike Rounds.....	EPWREP-6
Senator Dan Sullivan .....	EPWREP-7
Senator John Boozman .....	EPWREP-8
Senator Roger Wicker .....	EPWREP-9
Senator Richard Shelby.....	EPWREP-10
Senator Joni Ernst .....	EPWREP-11

Ranking Member Tom Carper .....	EPWDEM-1
Senator Ben Cardin .....	EPWDEM-2
Senator Bernie Sanders .....	EPWDEM-3
Senator Sheldon Whitehouse .....	EPWDEM-4
Senator Jeff Merkley .....	EPWDEM-5
Senator Kirsten Gillibrand .....	EPWDEM-6
Senator Cory Booker.....	EPWDEM-7
Senator Ed Markey .....	EPWDEM-8
Senator Tammy Duckworth.....	EPWDEM-9
Senator Chris Van Hollen .....	EPWDEM-10



Message

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**From:** Goodin, John [Goodin.John@epa.gov]  
**Sent:** 11/19/2020 11:00:29 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Aguirre, Janita [Aguirre.Janita@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Weiler, Katherine [Weiler.Katherine@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** FW: Urgent Review: Revisions to version of Yazoo DSEIS letter sent to leadership on 11-17  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles\_OWOW edits.docx

DELIBERATIVE

Evening, Lee—although Region 4 will be distributing the revised senior leadership review draft of the NEPA comment letter for your final review Friday or Monday, I wanted to send you a copy of our staff comments on the penultimate draft for your awareness. We have a few in the wetlands section and one in **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** I understand that Mary is looking to sign next Wednesday (though technically I believe the due date is the following Monday).

Feel free to loop back with any questions now or when you have the final review draft from R4.

Thanks,  
John

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**From:** Goodin, John  
**Sent:** Thursday, November 19, 2020 5:46 PM  
**To:** Fite, Mark <Fite.Mark@epa.gov>  
**Cc:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Russell Kaiser <Kaiser.Russell@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Steven Neugeboren <Neugeboren.Steven@epa.gov>  
**Subject:** FW: Urgent Review: Revisions to version of Yazoo DSEIS letter sent to leadership on 11-17

DELIBERATIVE

Evening, Mark—just a few OWOW comments here—couple points added back in the wetlands section, though mostly used a footnote format assuming that helps for readability. We also caught a few typos and font issues in the rest of the document.

Thanks again to you and your team,  
John



Message

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**From:** Tomiak, Robert [tomiaak.robert@epa.gov]  
**Sent:** 6/12/2020 3:51:40 PM  
**To:** Barger, Cindy [Barger.Cindy@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Shimkin, Martha [Shimkin.Martha@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

I agree; I think the OW-OGC-OP team effort assisting R4's staff resulted in a much more constructive approach.

Thanks, Rob

---

**From:** Barger, Cindy <Barger.Cindy@epa.gov>  
**Sent:** Friday, June 12, 2020 11:43 AM  
**To:** Goodin, John <Goodin.John@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Tomiak, Robert <tomiaak.robert@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Lee – I'll let Rob give his independent feedback but OFA-NCD feels that with the assistance/review HQ provided to the R4 team, the attachment is a useful information to USACE scoping effort to stay in line with the scope of the NOI and support development of a quality document understanding the important timeline for this project to identify and implement a flood risk solution quickly for the community.

Hope that is helpful.

Thanks!

Cindy

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
**Cell:** Ex. 6 Personal Privacy (PP)

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**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Friday, June 12, 2020 10:36 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE



Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won't speak for OFA, but my quick read of the crisp seven page attachment is that:

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Thanks,  
John

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Sent:** Friday, June 12, 2020 10:25 AM

**To:** Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Kaiser, Russell <[Kaiser.Russell@epa.gov](mailto:Kaiser.Russell@epa.gov)>

**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Can we do an evaluation of the letter with consistency with overall EPA direction.

---

**From:** Kajumba, Ntale <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>

**Sent:** Friday, June 12, 2020 10:02 AM

**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Cc:** Banister, Beverly <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>; Fite, Mark <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>; Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>; Wheeler, Kevin <[Wheeler.Kevin@epa.gov](mailto:Wheeler.Kevin@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>

**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 4/2/2020 5:15:12 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 4.6.2020.docx

Greetings - please see our attached weekly report and let us know if any questions. Still seeing a steady stream of coronavirus disinfectant requests. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP)

 (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides, and Toxics Team**  
**Week of April 6, 2020**

**Congress recessed**

**NEW:**

- Sen. Cassidy (LA) inquiry on quarternary ammonium shortage for viral disinfectants w/OCSPP (Sven)
- Rep. Gallagher (WI) request on Micron Pure ozone disinfectant w/OCSPP (Sven)
- Sen. Portman (OH) inquiry on behalf of Grilla company disinfectant w/OCSPP (Sven)
- Rep. Reed (NY) request on Indoor Air Professionals' Kanberra disinfectant w/OCSPP (Sven)
- Rep. Joyce (OH) request on SNIper viral disinfectant approval w/OCSPP (Sven)
- Sen. Menendez (NJ) request on GarmaGuard disinfectant w/OCSPP (Sven)
- Rep. Tom Graves (GA) inquiry re: constituent drinking water w/R4 (Matt)
- MMSA-based request for EPA participation in a call on Good Sam legislation later in April or May, that would include Sen. Gardner (CO) staff, NMA and industry, Trout Unlimited (Denis)
- HEC budget hearing QFRS (team)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

- Mar 26** – Rep. Rutherford (FL) constituent inquiry on Microgen disinfectant w/OCSPP (JohnMark/Sven)
- Mar 26** – Notification of updated list of EPA approved viral disinfectants w/OCSPP (Sven)
- Mar 26** – Sen. Johnson (WI)/Rep. Gallagher (WI)/State Sen. Kooyenga (WI) responses on Barbicide viral disinfectant w/OCSPP (Britt, Sven)
- Mar 26** – Sen. Loeffler (GA) followup response on Safe Decon viral disinfectant w/OCSPP (Sven)
- Mar 26** – Rep. Burchett (TN) followup inquiry on Midlab's viral disinfectant w/OCSPP (Sven)
- Mar 27** – Notification on webinar for draft biological evaluations w/OCSPP (Sven)
- Mar 30** – CRS inquiry re: SDWA 1459A and COVID-related funding w/OW (Matt)
- Mar 30** – Notification on approval of isoxaflutole for soybeans to control weeds w/OCSPP (Sven)
- Mar 30** – Sen. Sinema (AZ) inquiry re: AWIA risk & resilience assessments on military bases w/OW (Matt)
- Mar 30** – Notification on TSCA asbestos draft risk evaluation w/OCSPP (Sven)
- Mar 30** – Notification on press release re: not flushing disinfecting wipes w/OW (Denis)
- Mar 31** – Notification of 2020 Mercury Inventory Report w/OCSPP (Sven)
- Mar 31** – Rep. Nunes (CA) inquiry on Innovacyn disinfectant w/OCSPP (Sven)
- Mar 31, Apr 2** – Rep. Huizenga (MI) request on Biosolutions viral disinfectant w/OCSPP (Sven)
- Mar 31** – Notification on flexibility for disinfectant suppliers of active ingredients w/OCSPP (Sven)
- Apr 1** – Notification on proposed Wyoming UIC Class VI primacy approval w/OW, R8 (Matt)
- Apr 1** – House Ag (min) question on formaldehyde pesticide registration review w/OCSPP (Sven)
- Apr 1** – Sen Ag inquiry on pesticide PPE shortages w/OCSPP (Sven)
- Apr 1** – Sen. Shelby (AL) request on behalf of TYLON disinfectant coating w/OCSPP (Sven)
- Apr 1** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSPP (Sven)
- Apr 1** – Rep. Hartzler (MO) request on Danolyte viral disinfectant w/OCSPP (Sven)
- Apr 2** – Sen. Johnson/HSGAC (WI) inquiry for Better Air viral disinfectants w/OCSPP (Sven)
- Apr 2** – Notification on update to List N EPA-approved viral disinfectants w/OCSPP (Sven)
- Apr 2** – Gov of Hawaii inquiry on alcohol based disinfectants w/OCSPP (Britt, Sven)



**Week of Apr 13 (tent)** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)  
**May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)  
**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSP (Sven)  
**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSP (Sven)  
**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSP (Sven)  
**Pending** – Senate Ag question on pesticides reregistration advisory statement w/OCSP (Sven)  
**Pending** – Rep. McClintock (CA) inquiry re: pollution from Mule Creek State Prison w/R9 (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/ OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – SEPW TA request on drinking water & clean water provisions of draft WRDA w/OW (Matt)  
**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)  
**Pending** – PFAS briefings for House Approps w/cross-HQ team (Matt)  
**Pending** – House approp (maj) inquiry re: EPA OW actions & authorities re: COVID w/OW, OCFO (Matt)  
**Pending** – HAC Budget hearing QFRs (Team)  
**Pending** – Sen. Hyde-Smith (MS) inquiry re: Pearl, MS grant status w/R4 (Denis, Davina)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Denis)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Matt)

**HEARINGS/FORUMS:** None

**116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billIsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1" ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)**



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1689>" ]** /PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1790>" ]** /PL 116-92 – Inhofe (OK), NDAA w/PFAS provisions on TSCA and TRI, Signed on Dec 20 (Matt)

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/535>" ]** – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/729/>" ]** – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/748>" ]** – Courtney (CT), Coronavirus Aid, Relief, and Economic Security (CARES Act), "Phase 3" COVID-19 response legislation, including \$1.5m for expediting coronavirus pesticide registration, **Passed Senate Mar 26, Passed House Mar 27, signed by President Trump Mar 27** (Sven)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/925/>" ]**

– Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, Passed House Nov 20, **Amended and passed Senate via unanimous consent Jan 9** (Denis, Sven)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331/>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162/>" ]**

– Napolitano (CA), Water Recycling Investment and Improvement Act, Amends & expands Bureau of Reclamation water recycling & reuse grant program, **House Nat'l Resources markup held Mar 11** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **HEC hearing May 8, Passed HEC Nov 19** (Sven)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/house-bill/2247" ]** – Heck (WA), Promoting United Government Efforts To Save Our Sound Act ("PUGET SOS Act"). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/3723" ]** – Levin (CA), Desalination Development Act, Amends Dept of Interior desalination-project authorities, **House Nat'l Resources markup held Mar 11 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4031" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4891/text" ]** – Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28 (Matt)**,



## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5279>" ]**

– Pallone (NJ), Cosmetic Safety Enhancement Act, Amends existing FDA authorization to review cosmetics, **Marked up by E&C health subcommittee 3/11 w/ Dingell amendment to prioritize cosmetics w/ PFAS (Matt)**

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5347/>" ]**

– Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28 (Matt)**

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535 (Matt)**

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535 (Matt)**

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16 (Matt)**

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act,



Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, Adds requirements for oil & gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil & gas operations, **Introduced Mar 5** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113/>" ]**

– Katko (NY), ARPA-H2O Act, Creates new "Advanced Research Projects Agency-Water" within EPA, EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6185/>" ]**

– Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10/>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, Introduced Jan 3, **Passed Senate Commerce Nov 13** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087/>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1982>" ]** – Sullivan (AK), Save Our Seas 2.0 Act, Amended and passed Senate via unanimous consent Jan 9 (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2353>" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB sent other agencies' views for our review Mar 23** (Matt)

[ **HYPERLINK**

**"<https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf>" ]** – Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **introduced Sept 19, Passed Senate Commerce Nov 13** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]** – Murkowski (AK), Nexus of Energy and Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, **Introduced Dec 17** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051>" ]** – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9** (Denis, Sven)

[ **HYPERLINK**

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/senate-bill/3211" ]** – Rubio (FL), Clean Water Allotment  
Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as  
H.R. 5628, **Introduced Jan 16** (Matt)

[ [HYPERLINK "https://www.congress.gov/bill/116th-congress/senate-bill/3480"](https://www.congress.gov/bill/116th-congress/senate-bill/3480) ] – Shaheen (NH), PFAS Testing  
and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant  
projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12; CBO inquiry  
Mar 19 re groundwater cleanup guidance** (Matt / Carolyn Levine)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/19/2020 7:20:51 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: My comments  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles-dlf.mswdocx.docx

You all may be using other documents, but I have added my comments to Lee's -- Attached.

Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, November 19, 2020 10:33 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** My comments

Mary, David, Brittany and Kevin,

Here are my comments on the proposed Yazoo letter. Should we work off of this redline or each send our own to the team?

Lee



Message

---

**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 3/19/2020 2:50:51 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team weekly Report  
**Attachments:** 3.23.2020.docx

Coronavirus week with multiple requests on viral disinfectants and water sector capacity. Please let us know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP)

(C)



**Office of Congressional and Intergovernmental Relations  
Water, Pesticides and Toxics Team  
Week of March 23, 2020**

**NEW:**

HAC Budget hearing QFRs (Team)

Senate Ag TA request on draft coronavirus bill w/OCSP, OGC (Sven)

House Ag and House E&C requests on viral disinfectant lab capacity w/OCSP (Sven)

Senate Ag question on pesticides reregistration advisory statement w/OCSP (Sven)

Sen. Hyde-Smith (MS) inquiry re: City of Pearl, MS, special appropriations grant status w/ R4 (Denis)

Rep. McClintock (CA) inquiry re: pollution from Mule Creek State Prison w/R9 (Sven)

Rep. Burchett (TN) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Sen. Coons (DE) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Rep. Kinziger (IL) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Rep. Walden (OR) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Rep. Graves (GA) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Rep. Wittman (VA) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

HEC (min) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

Sen. Sasse (NE) inquiry on coronavirus and viral disinfectants w/OCSP (Sven)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

**Mar 3** – Rep. Cartwright (PA) inquiry on the Chesapeake Bay Program budget w/R3 (Kyle, Denis)

**Mar 12** – House Science briefing on PFAS w/ ORD, OCFO (Matt)

**Mar 12** – House Ag briefing call on PRIA fees w/OCSP (Sven)

**Mar 12** – Notification on updated ESA biological evaluation approach w/OCSP (Sven)

**Mar 12** – CRS and Rep. Heck (WA) re: AWIA stormwater infrastructure task force w/OW (Matt)

**Mar 13** – Sen Ag briefing call on coronavirus and viral disinfectants w/OCSP (Sven)

**Mar 13** – Notification on expanded COVID-19 disinfection list w/OCSP (Sven)

**Mar 17** - Rep. Fortenberry (NE) inquiry re: drinking water project financing (Matt)

**Mar 17** – House Ag call on coronavirus and viral disinfectants w/OCSP (Sven)

**Mar 18** – Sen. Collins (ME) inquiry re: potential funding for PFAS in small drinking water systems (Matt)

**Mar 19** – Rep. Marshall (KS) call on coronavirus and viral disinfectants w/OCSP (Sven)

**May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)

**Week of Apr 6 (tent)** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)

**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)

**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)

**Pending** – Rep. Meuser (PA) stormwater questions w/R3, OW (Denis)

**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSP (Sven)

**Pending** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSP (Sven)

**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSP, R4 (Sven)

**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSP (Sven)

**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSP (Sven)

**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/ OW (Matt)

**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)

**Pending** – SEPW TA request on clean water provisions of draft WRDA w/OW (Matt)

**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)

[ PAGE \\* MERGEFORMAT ]



**Pending** – Rep. Cuellar (TX) inquiry on USMCA border water funding w/OW, OITA (ACC team, Matt)  
**Pending** – PFAS briefings for House Approps w/cross-HQ team (Matt)  
**Pending** – Rep. Latta (OH) inquiry constituent inquiry re: SDWA Tier II notifications w/OW, R5 (Matt)  
**Pending** – SEPW TA request on drinking-water provisions of draft WRDA w/OW (Matt)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Sven)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Sven)

**HEARINGS/FORUMS:** none

**116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billIsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1" ]** /PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1689" ]** /PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1790" ]** /PL 116-92 – Inhofe (OK), NDAA w/PFAS provisions on TSCA and TRI, Signed on Dec 20 (Matt)

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/535>" ]**

– Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/729/>" ]**

– Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/925/>" ]**

– Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed House Nov 20, Amended and passed Senate via unanimous consent Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162>" ]**

– Napolitano (CA), Water Recycling Investment and Improvement Act, Amends & expands Bureau of Reclamation water recycling & reuse grant program, **House Nat'l Resources markup held Mar 11** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **Introduced Mar 7, HEC hearing May 8, Passed HEC Nov 19** (Sven)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), Promoting United Government Efforts To Save Our Sound Act ("PUGET SOS Act"). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/3723>" ]**

– Levin (CA), Desalination Development Act, Amends Dept of Interior desalination-project authorities, **House Nat'l Resources markup held Mar 11** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]**

– Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]**



**congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4891/text" ]** – Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28 (Matt)**,

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5279" ]** – Pallone (NJ), Cosmetic Safety Enhancement Act, Amends existing FDA authorization to review cosmetics, **Marked up by E&C health subcommittee 3/11 w/ Dingell amendment to prioritize cosmetics w/ PFAS (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5347/" ]** – Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28 (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5539" ]** – Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535 (Matt)**



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628/>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5799/>" ]**

– Peterson (MN), Bridging Responsible Agricultural Conservation Efforts Act, Clarifies EPA, Corps, and USDA wetlands regulations, and requires “normal farming practices” rulemaking, **Introduced Feb 7** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5856/>" ]**

– Sewell (AL), Decentralized Wastewater Grant Act, Creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req’t, Same as S. 3274, **Introduced Feb 11** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5857/>" ]**

– Ocasio-Cortez (NY), Fracking Ban Act, Bans hydraulic fracturing operations beginning in 2025, Same as S. 3247, **Introduced Feb 12** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5902/text>" ] – Mast (FL), MICRO Plastics Act, Creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as S. 3306, **Introduced Feb 13** (Denis)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5986>" ] – Grijalva (AZ), Environmental Justice for All Act, Broad environmental justice bill that would amend CWA NPDES requirements to require consideration of cumulative impacts and EJ, **Introduced Feb 27** (Denis)



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, Adds requirements for oil & gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil & gas operations, **Introduced Mar 5** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113>" ]**

– Katko (NY), ARPA-H2O Act, Creates new "Advanced Research Projects Agency-Water" within EPA, EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6185>" ]**

– Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, **Introduced Jan 3, Passed Senate Commerce Nov 13** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1982>" ]**

– Sullivan (AK), Save Our Seas 2.0 Act, Amended and passed Senate via unanimous consent Jan 9 (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2353>" ]**

– Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB requested EPA views Mar 4; may be hotlined in the Senate soon** (Matt)

[ **HYPERLINK**

**"<https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf>" ]**

– Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **introduced Sept 19, Passed Senate Commerce Nov 13** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]**

– Murkowski (AK), Nexus of Energy and Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, **Reported to Senate Dec 17** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051>" ]**

– Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing



tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3211>" ]**

– Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3221>" ] – Booker (NJ), Farm System Reform Act, Bans large CAFOS and makes integrators liable for air & water discharges, **Introduced Jan 21** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3274>" ]**

– Booker (NJ), Decentralized Wastewater Grant Act, creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as H.R. 5856, **Introduced Feb 11** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3306/>" ] – Merkley (OR), MICRO Plastics Act, creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as H.R. 5902, **Introduced Feb 13** (Denis)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3480/>" ] – Shaheen (NH), PFAS Testing and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12** (Matt)



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 2/25/2020 9:08:40 PM  
**To:** Ross, David P [ross.davidp@epa.gov]  
**CC:** Aguirre, Janita [Aguirre.Janita@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]  
**Subject:** For your review: draft responses to September T&I hearing QFRs  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20.pdf

Internal/Deliberative

Dave,

For your airplane reading this evening (if you want), attached are draft responses to the QFRs from your September 2019 T&I hearing reviewed and approved by your Deputies and Senior Advisors. Lead reviewers for the responses are shown below.

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee/Charlotte  
DeFazio PFAS – Jess/Anna/Charlotte  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee/Charlotte  
DeFazio Pebble (we just say you are recused) – Lee  
Johnson 1 and 2 WOTUS – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

Please let us know your edits/comments.

Thanks!

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 11/19/2020 4:05:06 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: My comments

My edits are still on a hard copy – so I will use this as a base.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, November 19, 2020 10:33 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** My comments

Mary, David, Brittany and Kevin,

Here are my comments on the proposed Yazoo letter. Should we work off of this redline or each send our own to the team?

Lee



Message

---

**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 4/10/2020 4:54:51 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

OK, I will contact Denis Borum.

Thanks.

bf

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, April 10, 2020 12:51 PM  
**To:** Frazer, Brian <Frazer.Brian@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** RE: FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Brian and Greg,

Coordinate with OCIR and OCFO and see if Ex. 5 Deliberative Process (DP)

Lee

---

**From:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Sent:** Friday, April 10, 2020 12:48 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Lee and Greg,

Are you aware of a request that OCFO wants a status update on the steps we have taken to address a request included in the FY 2020 Appropriations Bill and Report language to brief the Appropriations Committee on our coordination with the Corps on the Yazoo Pumps Project by 3 pm today? According to the timeline in the Act, that briefing was to have taken place by 1/19/20.

We were not made aware of the request until this morning.

Thanks,

bf

---

**From:** Highsmith, Damon <Highsmith.Damon@epa.gov>  
**Sent:** Friday, April 10, 2020 8:56 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>; Redford, David <Redford.David@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Dickens, Sandy <Dickens.Sandy@epa.gov>  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Dave,



Could you help with an update to the item below? It's due to RMS today at 3:00. I would appreciate a response cleared through Brian in time for us to respond.

Thanks!  
Damon

#	Report Heading	Office		Due to Congress	Status	Date Completed
36	Interagency Coordination on Flood Reduction	OWOW	The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.	Sunday, January 19, 2020		

**From:** Drummond, Laura <[Drummond.Laura@epa.gov](mailto:Drummond.Laura@epa.gov)>

**Sent:** Thursday, April 09, 2020 9:38 AM

**To:** Cooper, Tiffany <[Cooper.Tiffany@epa.gov](mailto:Cooper.Tiffany@epa.gov)>; Bissonette, Eric <[Bissonette.Eric@epa.gov](mailto:Bissonette.Eric@epa.gov)>; Highsmith, Damon <[Highsmith.Damon@epa.gov](mailto:Highsmith.Damon@epa.gov)>; Dickens, Sandy <[Dickens.Sandy@epa.gov](mailto:Dickens.Sandy@epa.gov)>; Malloy, Daniel <[Malloy.Daniel@epa.gov](mailto:Malloy.Daniel@epa.gov)>; Gilbertson, Sue <[gilbertson.sue@epa.gov](mailto:gilbertson.sue@epa.gov)>

**Cc:** Vazquez, Sharon <[Vazquez.Sharon@epa.gov](mailto:Vazquez.Sharon@epa.gov)>; Moody, Christina <[Moody.Christina@epa.gov](mailto:Moody.Christina@epa.gov)>; Woods, Terry <[Woods.Terry@epa.gov](mailto:Woods.Terry@epa.gov)>; Danesi, Robin <[Danesi.Robin@epa.gov](mailto:Danesi.Robin@epa.gov)>; Kuntz, Kerry <[Kuntz.Kerry@epa.gov](mailto:Kuntz.Kerry@epa.gov)>

**Subject:** Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Hello,



OCFO is tracking reporting requirements from the FY 2020 Appropriations Bill and Report language. Please provide updates to the attached document by 3:00pm Friday April 10. If you have any questions, please let us know!

Thanks,  
Laura Drummond  
Program Analyst  
U.S. Environmental Protection Agency  
Office of Water – Resource Management Staff  
Phone – (202) 564-6561

\*\*\*\*\*

Brian Frazer, Director  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
US Environmental Protection Agency  
202-566-1652



Message

---

**From:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Sent:** 6/12/2020 3:43:20 PM  
**To:** Goodin, John [Goodin.John@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]  
**CC:** Shimkin, Martha [Shimkin.Martha@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Lee – I'll let Rob give his independent feedback but OFA-NCD feels that with the assistance/review HQ provided to the R4 team, the attachment is a useful information to USACE scoping effort to stay in line with the scope of the NOI and support development of a quality document understanding the important timeline for this project to identify and implement a flood risk solution quickly for the community.

Hope that is helpful.

Thanks!  
Cindy

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
*Cell: Ex. 6 Personal Privacy (PP)*

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Friday, June 12, 2020 10:36 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE

Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won't speak for OFA, but my quick read of the crisp seven page attachment is that **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Thanks,  
John

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, June 12, 2020 10:25 AM  
**To:** Barger, Cindy <Barger.Cindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Can we do an evaluation of the letter with consistency with overall EPA direction.



---

**From:** Kajumba, Ntale <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>

**Sent:** Friday, June 12, 2020 10:02 AM

**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Cc:** Banister, Beverly <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>; Fite, Mark <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>; Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>; Wheeler, Kevin <[Wheeler.Kevin@epa.gov](mailto:Wheeler.Kevin@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>

**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



## Appointment

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**From:** Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Sent:** 11/6/2020 2:56:37 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]

**Subject:** Tentative: Yazoo policy call

**Location:** Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 11/6/2020 11:00:00 PM  
**End:** 11/6/2020 11:30:00 PM

**Recurrence:** (none)



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 1/8/2020 8:44:40 PM  
**To:** McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Tovar, Katlyn [tovar.katlyn@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** review responses to QFRs from 9/18 Ross hearing  
**Attachments:** 2019-09-16 EPA-DeFazio (Peak Flows).pdf; 2019-09-16 EPA-DeFazio (CWA Interpretive Statement).pdf; 2019-09-16 EPA-DeFazio (CWA 401).pdf; 2019-09-17 EPA-DeFazio (WOTUS).pdf; responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-08-20.docx

Owen, Jess, Anna, and Lee,

Consistent with Dave's direction from Monday, I am passing along to you for review an updated set of responses to Dave's Sept T&I hearing QFRs. These have been updated by the offices. I left some redline in to show where OWOW updated items re: 401 and where OGWDW updated the PFAS response based on Jess's comments. Some of the WOTUS ones will need to be updated a bit after the final rule is public. Please let me know if you would like me to give you a hard copy. The final oversight letters are attached as a reference/resource.

Below are the question assignments:

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

---

**From:** Spraul, Greg  
**Sent:** Tuesday, October 29, 2019 2:17 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** DEADLINE COB Monday 11/4 - review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,

Attached are draft responses to the questions for the record that came in from Dave's September 9/18 hearing before House T&I for your review. The redline in the document are my edits to the program office authored answers. Based on my reading, these answers are consistent with the messaging I've seen in hearing fact sheets, other QFR responses, our oversight letter responses and press releases. Please review and provide edits by COB Monday, November 4. For your reference, I am also attaching the final responses to the 4 DeFazio oversight letters (sans attachments).

Below are the question assignments:

DeFazio WOTUS – Owen (pages 1-5)  
DeFazio DHC – Anna (pages 5-6)  
DeFazio Blending – Lee (pages 6-7)



DeFazio PFAS – Jess (Page 7)  
DeFazio 401 – Anna/Jess (Pages 7-8)  
DeFazio Yazoo – Lee (Pages 8-9)  
DeFazio Pebble – Lee (Pages 9-10)  
Johnson 1 and 2 – Owen (page 12)  
Johnson 3 401 – Anna/Jess (Page 13)  
Graves 1 – WA WQS – Anna (Page 13)

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 4/10/2020 4:47:57 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Lee and Greg,

Are you aware of a request that OCFO wants a status update on the steps we have taken to address a request included in the FY 2020 Appropriations Bill and Report language to brief the Appropriations Committee on our coordination with the Corps on the Yazoo Pumps Project by 3 pm today? According to the timeline in the Act, that briefing was to have taken place by 1/19/20.

We were not made aware of the request until this morning.

Thanks,

bf

**From:** Highsmith, Damon <Highsmith.Damon@epa.gov>  
**Sent:** Friday, April 10, 2020 8:56 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>; Redford, David <Redford.David@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Dickens, Sandy <Dickens.Sandy@epa.gov>  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Dave,

Could you help with an update to the item below? It's due to RMS today at 3:00. I would appreciate a response cleared through Brian in time for us to respond.

Thanks!  
Damon

#	Report Heading	Office		Due to Congress	Status	Date Completed
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36	Interagency Coordination on Flood Reduction	OWOW	<p>The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.</p>	Sunday, January 19, 2020		
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**From:** Drummond, Laura <Drummond.Laura@epa.gov>

**Sent:** Thursday, April 09, 2020 9:38 AM

**To:** Cooper, Tiffany <Cooper.Tiffany@epa.gov>; Bissonette, Eric <Bissonette.Eric@epa.gov>; Highsmith, Damon <Highsmith.Damon@epa.gov>; Dickens, Sandy <Dickens.Sandy@epa.gov>; Malloy, Daniel <Malloy.Daniel@epa.gov>; Gilbertson, Sue <gilbertson.sue@epa.gov>

**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Danesi, Robin <Danesi.Robin@epa.gov>; Kuntz, Kerry <Kuntz.Kerry@epa.gov>

**Subject:** Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Hello,

OCFO is tracking reporting requirements from the FY 2020 Appropriations Bill and Report language. Please provide updates to the attached document by 3:00pm Friday April 10. If you have any questions, please let us know!

Thanks,

Laura Drummond

Program Analyst

U.S. Environmental Protection Agency

Office of Water – Resource Management Staff



Phone – (202) 564-6561

\*\*\*\*\*

Brian Frazer, Director  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
US Environmental Protection Agency  
202-566-1652



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 10/16/2020 8:37:39 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** FYI - 2 incoming congressional letters assigned to regions  
**Attachments:** incoming\_higgins\_uic\_vi\_10-13-20.pdf; incoming\_thompson\_yazoo\_foia\_10-02-20.pdf

Lee and Charlotte,

I wanted to make you aware of these two incoming congressional letters assigned to Region 6 (UIC Class VI) and Region 4 (Yazoo). OW will have the opportunity to review draft responses prior to signature.

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



BENNIE G. THOMPSON  
SECOND DISTRICT, MISSISSIPPI

COMMITTEE ON  
HOMELAND SECURITY  
Chairman

WASHINGTON OFFICE:  
2466 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2402  
(202) 225-5876  
(202) 225-5598; FAX  
E-Mail: [benniethompson@mail.house.gov](mailto:benniethompson@mail.house.gov)  
Home Page: <http://www.benniethompson.house.gov>

CONGRESSIONAL BLACK CAUCUS  
CONGRESSIONAL GAMING CAUCUS  
CONGRESSIONAL PROGRESSIVE CAUCUS  
CONGRESSIONAL SPORTSMEN'S CAUCUS  
CONGRESSIONAL RURAL CAUCUS  
HOUSE EDUCATION CAUCUS

Congress of the United States  
House of Representatives  
Washington, DC 20515-2402

October 2, 2020

Mr. Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Freedom of Information Act Request Complaint – Yazoo Backwater Pump Project**

Dear Administrator Wheeler:

I am writing your offices to address the lack of responsiveness to information that I have requested from your office. On February 6, 2020, I wrote to your office pursuant to a constituent request asking that my office facilitate information relative to the Yazoo Backwater Pumps project (the "Yazoo Pumps"). The request was simply to obtain information pertaining to the critical flooding and infrastructure issues that are impacting the district I represent in Mississippi as well as throughout the state. Requesting this information from your office was important in gauging the impacts of the Yazoo Backwater Pumps project on the persisting flooding issues that left approximately 500,000 acres of the Mississippi Delta under water just last year.

My letter to your office on February 6, 2020, requested the following items:

- 1. All studies, analyses, reports, assessments, or hydrologic models related to the Yazoo Pumps prepared by the U.S. Army Corps of Engineers and provided by the Corps of Engineers to EPA between January 1, 2019 and the present.*
- 2. All Documents evidencing any review or analysis by EPA of the Documents requested in paragraph 1, above.*
- 3. All Documents evidencing communications related to the Yazoo Pumps from January 1, 2019 to the present between EPA and any of the following: (a) the U.S. Army Corps of Engineers, (b) any federal, state, or local governmental entities, or (c) any members of Congress.*

On April 30, 2020, I received a letter from the Environmental Protection Agency (EPA) Office of FOIA for Region 4, which included documents that were determined to be "responsive to my request". Those documents only fulfilled one of the three requests in my letter, which included correspondence from US

<input type="checkbox"/> 107 WEST MADISON STREET P.O. BOX 610 BOLTON, MS 39041 (601) 866-9003 (601) 866-9038, FAX (609) 355-9003; IN GY.	<input type="checkbox"/> 728 MAIN STREET, SUITE A GREENWOOD, MS 38930 (662) 455-9003 (662) 453-0119; FAX	<input type="checkbox"/> 910 COURTHOUSE LAKE GREENVILLE, MS 38701 (662) 335-9002 (662) 334-1304; FAX	<input type="checkbox"/> 3607 MEDGAR EVERS BOULEVARD JACKSON, MS 39213 (601) 946-9002 (601) 982-5337; FAX	<input type="checkbox"/> 263 EAST MAIN STREET MARKEE, MS 38648 (662) 326-3003	<input type="checkbox"/> MOUND BAYOU CITY HALL 105 GREEN AVENUE, SUITE 106 MOUND BAYOU, MS 38762 (662) 741-9003 (662) 741-9002; FAX
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ED\_005402\_00006594-00001



Senators and the Governor of Mississippi pertaining to the Yazoo Backwater Pump Project. In the same correspondence to my office it was stated by your office:

*"This is our first interim response. However, we will continue to provide additional documents as they are reviewed and are ready for production. In addition, pursuant to EPA regulations, 40 CFR §2.103(d)(2), we have determined that some of the records responsive to your request originated with the COE and will be referred to them for direct response to you."*

Since that date, I have not received any additional documents from your office pursuant to my request. Five months later and after reaching out to your office on several occasions I received a letter on September 18, 2020 which stated:

*"Due to other workload priorities, the site attorney, Matt Hicks, has been unable to focus the necessary attention to your request. Additional staff has recently been assigned to work on processing requests involving Yazoo. However, we will need to request an extension of time to process your request. We anticipate a response to you on or before **December 18, 2020**."*

In accordance with your offices' latest correspondence with my office, there will be a lapse of an estimated ten months from when you received my initial request. I do understand that we are currently living in unprecedented times due to the Coronavirus pandemic and the processes of requests may have been slowed down or even halted. Nevertheless, providing a timeline of or around December 18<sup>th</sup> is grossly beyond reason to receive a full response to a request that was sent to your office in February with an initial turnaround time of (20) working days.

This information in this request is important to understanding the impacts and the methodology used to evaluate the Yazoo Pumps and its impact on the habitat that is essential to the nation's fish and wildlife resources, which are of fundamental concern to the public.

Under the Freedom of Information Act, I am entitled to all the requested information. Should you decide all or any portion of the requested materials are not to be disclosed, please describe the material withheld and specify in detail the statutory or administrative basis for withholding that material. I am requesting an immediate response to my office, in accordance with the Freedom of Information Act.

Thank you for your time and attention to this request. If further justification is needed or any concerns regarding this matter, please don't hesitate to contact Claytrice Henderson in my Washington, D.C. office at 202-225-5876 or via email at [claytrice.henderson@mail.house.gov](mailto:claytrice.henderson@mail.house.gov).

Sincerely,



Bennie G. Thompson  
Member of Congress



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 6/15/2020 4:23:10 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs

Great news. Thanks. The next step is OCIR will send to Committee.

---

**From:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Sent:** Monday, June 15, 2020 12:20 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Ross, David P <ross.davidp@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** RE: 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs

Hi Greg,

Dave has reviewed and cleared the two edits on pages 9 and 12 (Maui and Yazoo). Please move this to the next step when you get a chance.

Thank you,  
Janita

---

**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

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**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Monday, June 15, 2020 11:01 AM  
**To:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>  
**Cc:** Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>  
**Subject:** 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs  
**Importance:** High

INTERNAL/DELIBERATIVE

Janita,

As mentioned at staff meeting this morning, two other small edits on pages 9 (Maui) and 12 (Yazoo). Travis in OCIR has already run the Maui edit by David Fotouhi and he/OGC is good with it. The Yazoo edit is minor. Hopefully, Dave will be ok with these as is. Once he clears, OCIR will work to get these responses to the Committee.

Thanks,  
Greg



Message

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**From:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Sent:** 11/6/2020 2:05:02 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** RE: Question

Okay, I set up a teams meeting line that we can jump on following this call.

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, November 06, 2020 8:45 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Subject:** RE: Question

Sure.

---

**From:** Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Sent:** Friday, November 6, 2020 8:44 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Subject:** RE: Question

Sure, how about if Brian and I call you after.

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)



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**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Sent:** Friday, November 06, 2020 8:14 AM

**To:** Kaiser, Russell <[Kaiser.Russell@epa.gov](mailto:Kaiser.Russell@epa.gov)>

**Subject:** Question

Russ,

After this call can you call me on Yazoo. I am having trouble understanding why Ex. 5 Deliberative Process (DP)

Lee



Message

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**From:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Sent:** 6/15/2020 4:20:14 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs

Hi Greg,

Dave has reviewed and cleared the two edits on pages 9 and 12 (Maui and Yazoo). Please move this to the next step when you get a chance.

Thank you,  
Janita

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**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

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**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Monday, June 15, 2020 11:01 AM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs  
**Importance:** High

INTERNAL/DELIBERATIVE

Janita,

As mentioned at staff meeting this morning, two other small edits on pages 9 (Maui) and 12 (Yazoo). Travis in OCIR has already run the Maui edit by David Fotouhi and he/OGC is good with it. The Yazoo edit is minor. Hopefully, Dave will be ok with these as is. Once he clears, OCIR will work to get these responses to the Committee.

Thanks,  
Greg



Message

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/24/2020 2:57:10 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Internal Prep Call on Yazoo (per EPW Minority Pending Request)

Good morning, Lee –

Do either of these times work for you? Today at 2 pm, or Wed (tomorrow) at 1 pm? If not, could you give me a couple times that would for this week? Thank you

Denis

Denis R. Borum  
Congressional Liaison Specialist  
Office of Congressional and Intergovernmental Relations  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (MC-1301A)  
Washington, D.C. 20460  
(202) 564-4836 (phone)  
(202) 501-1549 (fax)  
[borum.denis@epa.gov](mailto:borum.denis@epa.gov) (e-mail)



Message

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**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 3/12/2020 3:00:22 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 3.16.2020.docx

This week's highlights include notifications and inquiries on coronavirus and viral disinfectants. Please let us know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  
Ex. 6 Personal Privacy (PP) (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides and Toxics Team**  
**Week of March 16, 2020**

**NEW:**

SEPW TA request on clean water provisions of draft WRDA w/OW (Matt)  
Senate Indian Affairs TA request on Indian reservation drinking water grant program w/OW (Matt)  
Rep. Fortenberry (NE) inquiry re: drinking water project financing (Matt)  
Rep. Cartwright (PA) inquiry on the Chesapeake Bay Program budget w/R3 (Kyle, Denis)  
CRS inquiry re: funding for AWIA stormwater infrastructure task force w/OW (Matt)  
Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSPP (Sven)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

**Mar 5** – Notification of approved list of disinfectants against COVID-19 w/OCSPP (Sven)  
**Mar 6** – HEC (min) response to questions on TSCA programs w/OCSPP (Sven)  
**Mar 6** – Sen. Gillibrand (NY) staff call on constituent mosquito repellent w. OCSPP, R2 (Sven)  
**Mar 9** – Notification on expediting viral disinfectant approvals w/OCSPP (Sven)  
**Mar 9** – SEPW (min) response to questions about approved coronavirus disinfectants w/OCSPP (Sven)  
**Mar 9** – Notification on 60 day extension of TSCA fees public comment period w/OCSPP (Sven)  
**Mar 10** – Rep. Davids (KS) constituent inquiry on viral disinfectant approval process w/OCSPP (Sven)  
**Mar 11** – Rep. Kaptur (OH) staff briefing on HABHRCA & HABs program w/OW (Denis)  
**Mar 12** – House Science briefing on PFAS w/ ORD, OCFO (Matt)  
**Mar 12** – House Ag briefing call on PRIA fees w/OCSPP (Sven)  
**Mar 13** – Sen Ag briefing call on coronavirus and viral disinfectants w/OCSPP (Sven)  
**May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)  
**Pending** – Rep. Perry (PA) + three letter on Chesapeake Bay water treatment method w/OW (Denis)  
**Pending** – Sen. Hirono (HI) briefing request on alternative pathogen indicators w/OW (Denis)  
**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Rep. Meuser (PA) stormwater questions w/R3, OW (Denis)  
**Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSPP (Sven)  
**Pending** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSPP (Sven)  
**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSPP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSPP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/ OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – Rep. Cuellar (TX) inquiry on USMCA border water funding w/OW, OITA (ACC team, Matt)  
**Pending** – PFAS briefings for House Approps w/cross-HQ team (Matt)  
**Pending** – Rep. Latta (OH) inquiry constituent inquiry re: SDWA Tier II notifications w/OW, R5 (Matt)  
**Pending** – SEPW TA request on drinking-water provisions of draft WRDA w/OW (Matt)  
**Pending** – Rep. Rouzer (NC) constituent inquiry re: well water w/R4 (Matt)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Sven)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Sven)

**HEARINGS/FORUMS:**

[ PAGE \\* MERGEFORMAT ]



Topic: [ HYPERLINK "https://appropriations.house.gov/events/hearings/impact-of-pfas-exposure-on-servicemembers" ]  
Committee: House Appropriations, Subcommittee on Military Construction, VA and Related Agencies  
Date: Wed, March 11, 2020  
EPA Witness: No EPA Witness - participation from DOD  
Contact: Matt Klasen

Topic: [ HYPERLINK "https://www.epw.senate.gov/public/index.cfm/hearings?ID=35FAC322-B10D-445C-8A86-F895E94791CD" ]  
Committee: Senate Environment and Public Works  
Date: Wed, March 11, 2020  
EPA Witness: Doug Benevento  
Contact: Tony Frye

Topic: [ HYPERLINK "https://www.agriculture.senate.gov/hearings/agriculture-innovation-and-the-federal-biotechnology-regulatory-framework" ]k  
Committee: Senate Agriculture  
Date: Thurs, March 12, 2020  
EPA Witness: No EPA Witness  
Contact: Sven-Erik Kaiser

Topic: EPA FY2021 Budget  
Committee: House Transportation & Infrastructure, Subcommittee on Water Resources & Env't  
Date: Tues, March 31, 2020  
EPA Witness: Charlotte Bertrand (DAA OW) and Barry Breen (DAA OLEM)  
Contact: Denis Borum/Pamela Janifer

#### 116<sup>th</sup> CONGRESS ENACTED LEGISLATION:

[ **HYPERLINK**  
**"https://www.congress.gov/bill/116th-**  
**congress/senate-**  
**bill/483/actions?q=%7B%22search%22%3A**  
**%5B%22actionDateChamber%3A%5C%221**  
**16%7CS%7C2019-02-**  
**15%5C%22+AND+%28billIsReserved%3A%**  
**5C%22N%5C%22+OR+type%3A%5C%22A**  
**MENDMENT%5C%22%29%22%5D%7D&r**



**=1&s=1" ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1689" ]/PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1790" ]/PL 116-92 – Inhofe (OK), NDAA w/PFAS provisions on TSCA and TRI, Signed on Dec 20 (Matt)**

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/535" ] – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/729/" ] – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10** (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/925/" ] – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, Passed House Nov 20, **Amended and passed Senate via unanimous consent Jan 9** (Denis, Sven)**



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162>" ]**

– Napolitano (CA), Water Recycling Investment and Improvement Act, Amends & expands Bureau of Reclamation water recycling & reuse grant program, **House Nat'l Resources markup held Mar 11** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **Introduced Mar 7, HEC hearing May 8, Passed HEC Nov 19** (Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), Promoting United Government Efforts To Save Our Sound Act ("PUGET SOS Act"). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/house-bill/3723" ]** – Levin (CA), Desalination Development Act, Amends Dept of Interior desalination-project authorities, **House Nat'l Resources markup held Mar 11** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4031" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4891/text" ]** – Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28** (Matt),

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5347/" ]** – Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28** (Matt)



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5799>" ]**

– Peterson (MN), Bridging Responsible Agricultural Conservation Efforts Act, Clarifies EPA, Corps, and USDA wetlands regulations, and requires “normal farming practices” rulemaking, **Introduced Feb 7** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5856>" ]**

– Sewell (AL), Decentralized Wastewater Grant Act, Creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req’t, Same as S. 3274, **Introduced Feb 11** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5857>" ]**

– Ocasio-Cortez (NY), Fracking Ban Act, Bans hydraulic fracturing operations beginning in 2025, Same as S. 3247, **Introduced Feb 12** (Matt)

[ PAGE \\* MERGEFORMAT ]



[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5902/text>" ] – Mast (FL), MICRO Plastics Act, Creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as S. 3306, **Introduced Feb 13** (Denis)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5986>" ] – Grijalva (AZ), Environmental Justice for All Act, Broad environmental justice bill that would amend CWA NPDES requirements to require consideration of cumulative impacts and EJ, **Introduced Feb 27** (Denis)

[ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

[ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113>" ]**

– Katko (NY), ARPA-H2O Act, Creates new “Advanced Research Projects Agency-Water” within EPA, EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

[ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, Introduced Jan 3, **Passed Senate Commerce Nov 13** (Denis)

[ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)

[ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**



**congress/senate-bill/1982" ]** – Sullivan (AK), Save Our Seas 2.0 Act, Amended and passed Senate via unanimous consent Jan 9 (Denis)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2353" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB requested EPA views Mar 4; may be hotlined in the Senate soon** (Matt)

**[ HYPERLINK**

**"https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf" ]** – Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **introduced Sept 19, Passed Senate Commerce Nov 13** (Matt)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2799/" ]** – Murkowski (AK), Nexus of Energy and Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, **Reported to Senate Dec 17** (Denis)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/3051" ]** – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9** (Denis, Sven)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/3211" ]** – Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)



[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3221>" ] – Booker (NJ), Farm System Reform Act, Bans large CAFOS and makes integrators liable for air & water discharges, **Introduced Jan 21** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3274>" ] – Booker (NJ), Decentralized Wastewater Grant Act, creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as H.R. 5856, **Introduced Feb 11** (Matt)**

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3306/>" ] – Merkley (OR), MICRO Plastics Act, creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as H.R. 5902, **Introduced Feb 13** (Denis)



Message

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**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 4/16/2020 2:26:43 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Collazo Reyes, Yvette [CollazoReyes.Yvette@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 4.20.2020.docx

Check out our weekly report including Senate EPW's Apr 22 electronic "information gathering process" on WRDA, in lieu of a hearing. Also, many disinfectant inquiries with almost every region represented. Please let us know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP) (C)



**Office of Congressional and Intergovernmental Relations  
Water, Pesticides, and Toxics Team  
Week of April 20, 2020**

**Congress recessed**

**NEW:**

- Sen. Feinstein (CA) inquiry re: USMCA border water funding status (Matt/TBD)
- Sen. Merkley (OR) inquiry re: potential for WIFIA interest-rate reductions w/OW (Matt)
- Sen. Rick Scott (FL) inquiry on 3B Medical's Lumin disinfectant w/OCSP, R4 (Sven)
- Rep. Steil (WI) request on DMR's NOVEX-AMG disinfectant w/OCSP (Sven)
- Rep. Arrington (TX) constituent disinfectant request w/OCSP, R6 (Sven)
- Sen. Manchin (WV) inquiry on 4D Tech Solutions w/OCSP (Sven)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

- Apr 9** – Announcement on allocation for increased FY20 GLRI funding of \$20 million w/OW, R5 (Denis)
- Apr 10** – TA to Senate EPW on clean water sections of draft WRDA w/ OW, OAR, OP, R5, R9 (Matt)
- Apr 10** – Sen. Lee (UT) question on Twin Oxide disinfectant w/OCSP (Sven)
- Apr 10** – Rep. Reed (NY) inquiry on Indoor Air Professionals' Kanberra disinfectant w/OCSP (Sven)
- Apr 10** – Sen. Alexander (TN) inquiry on Sterfre disinfectant w/OCSP (Sven)
- Apr 10** – Notification on updated data on TSCA CBI reviews w/OCSP (Sven)
- Week of Apr 13 (tent.)** – notification on importance of water workforce during COVID-19 w/OW (Matt)
- Week of Apr 13 (tent.)** – notification on press release re: perchlorate w/OW (Matt)
- Apr 13** – SEPW bipartisan staff TA call re: WRDA language on DWSRF add'l subsidy w/OW (Matt)
- Apr 14** – Notification on disinfectant approval changes w/OCSP (Sven)
- Apr 14 (tent.)** – House & Senate approps briefing on PFAS w/OCFO, OW, ORD, OCSP, OLEM (Matt)
- Apr 14** – Sen. Portman (OH) question on Gilla disinfectant w/OCSP (Sven)
- Apr 14** – Sen. Baldwin/Rep. Gallagher (WI) request on PurCart disinfectant w/OCSP (Sven)
- Apr 14** – Rep. Grothman (WI) question on Barbicide disinfectant w/OCSP (Sven)
- Apr 14** – HEC minority staff inquiry on pesticide disinfectants w/OCSP (Sven)
- Apr 14** – Sen. Inhofe (OK) inquiry on Purteq disinfectant w/OCSP (Sven)
- Apr 15** – Comments to DOD on PFAS NDAA drafting assistance w/OECA, OLEM, OW, ORD (Matt/Carolyn Levine)
- Apr 15** – Notification on PFAS SNUR comment period closing w/OCSP (Sven)
- Apr 15** – Rep. Loudermilk (GA) request on SilTanium disinfectant w/OCSP (Sven)
- Apr 15** – Notification on RTP science hiring opportunity w/OCSP (Sven)
- Apr 16** – House minority staff briefing call on FIFRA disinfectant approvals w/OCSP (Sven)
- Apr 16** – Sen. Cassidy (LA) update on actions helping with quat disinfectant supply w/OCSP (Sven)
- Week of Apr 20 (tent.)** – PFAS briefing for appropriators w/ OCFO, OW, ORD, OCSP, OLEM (Matt)
- Week of Apr 20 (tent.)** – Hill notification on final lead-free pipes rule w/OW (Matt)
- Apr 30** – NIEHS/ICCVAM briefing including Sen. Shaheen (NH)/Rep. Calvert (CA) w/OCSP (Sven)
- May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)
- Pending** – MMSA briefing call request on Good Sam legislation including Sen. Gardner (CO) staff, EPA, NMA, Trout Unlimited w/OW, OLEM, R8 (Denis)
- Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)



**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Sen. Hyde-Smith (MS) inquiry re: Pearl, MS grant status w/R4 (Denis, Davina)  
**Pending** – Rep. McCarthy (CA) question about pesticide worker PPE availability w/OCSPP (Sven)  
**Pending** – Sen. Portman/Reps. Johnson/Joyce (OH) inquiry on De Nora’s disinfectant w/OCSPP (Sven)  
**Pending** – Sen. Johnson (WI)/HSGAC inquiry on Betterair’s EB-8 disinfectant w/OCSPP (Sven)  
**Pending** – Rep. Gosar (AZ) request on Purus Air disinfectant w/OCSPP (JohnMark Kolb, Sven)  
**Pending** – Sen. Portman (OH) inquiry on behalf of Gilla company disinfectant w/OCSPP (Sven)  
**Pending** – Rep. Reed (NY) request on Indoor Air Professionals’ Kanberra disinfectant w/OCSPP (Sven)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSPP (Sven)  
**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSPP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSPP (Sven)  
**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSPP (Sven)  
**Pending** – Senate Ag question on pesticides reregistration advisory statement w/OCSPP (Sven)  
**Pending** – Sen. Rounds (SD) inquiry on soybean oil w/OCSPP, FDA (Sven)  
**Pending** – Rep. Amodei (NV) request on NMP risk evaluation w/OCSPP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)  
**Pending** – HAC QFRs from March 4 budget hearing w/OW (Team)  
**Pending** – HEC QFRs from Feb 27 budget hearing w/OCSPP, OW (Team)  
**Pending** – HTI QFRs from Sept 18 water policy hearing w/OW (Denis)  
**Pending** – SEPW QFRs from Oct 23 WRDA hearing w/OW (Matt)

#### **HEARINGS/FORUMS:**

Topic: Legislative “Paper” Hearing on Draft WRDA 2020  
 Committee: Senate Environment and Public Works  
 Date: Wednesday, April 22  
 EPA Witness: None  
 Contact: Matt Klasen

#### **116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

### **[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billsReserved%3A%**



**5C%22N%5C%22+OR+type%3A%5C%22A  
MENDMENT%5C%22%29%22%5D%7D&r  
=1&s=1" ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed  
Mar 8, 2019 (Sven)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-  
congress/senate-bill/1689" ]/PL 116-63 – Booker (NJ), SRF transfer  
bill, Signed Oct 3, 2019 (Elizabeth)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-  
congress/senate-bill/1790" ]/PL 116-92 – Inhofe (OK), NDAA w/PFAS  
TSCA and TRI provisions, Signed Dec 20, 2019 (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-  
congress/house-bill/748" ]/PL 116-136 – Courtney (CT), CARES Act,  
Phase 3 Covid-19 response w/\$1.5m for FIFRA pesticide disinfectants and \$1.5m for disinfectant  
research, Signed Mar 27, 2020 (Sven)**

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-  
congress/house-bill/535" ] – Dingell (MI), requires EPA to declare  
PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS  
infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-  
free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10**  
(Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-  
congress/house-bill/729/" ] – Kilmer (WA), Coastal and Great Lakes**



Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/EPA participation, **Passed House Dec 10** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/925/>" ]**

– Thompson (CA), see also S.3051, reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Passed House Nov 20, Amended and passed Senate Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331/>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162/>" ]**

– Napolitano (CA), expands Bureau of Reclamation water recycling and reuse grant program, **House Natural Resources markup held Mar 11** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), bans asbestos and adds reporting requirements, same as S.717, **HEC hearing May 8, Passed HEC Nov 19** (Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24, **Passed House Feb 5** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]** – Heck (WA), establishes Puget Sound program office, Task Force, and Advisory Committee, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/3723>" ]** – Levin (CA), amends DOI desalination project authorities, **Passed House Natural Resources Mar 11 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4891/text>" ]** – Torres Small (NM), amends DOI and EPA water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Natural Resources hearing held Jan 28 (Matt)**,



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5279>" ]**

– Pallone (NJ), amends existing FDA authorization to review cosmetics, **Passed HEC health subcommittee Mar 11 w/Dingell amendment to prioritize cosmetics w/PFAS (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5347/>" ]**

– Cox (CA), creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Natural Resources hearing held Jan 28 (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Incorporated into H.R. 535 (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), requires notification of PFAS discharges to POTWs, **Incorporated into H.R. 535 (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16 (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act,



Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, adds requirements for oil and gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil and gas operations, **Introduced Mar 5** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113/>" ]**

– Katko (NY), ARPA-H2O Act, creates new EPA "Advanced Research Projects Agency-Water", EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6185/>" ]**

– Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

[ HYPERLINK "<https://debbiedingell.house.gov/news/documentsingle.aspx?DocumentID=2294>" ] -- Tlaib (MI), Emergency Water is a Human Right Act, Creates \$1.5b HHS grant program for providing assistance to low-income drinking water & wastewater customers, prohibits water shutoffs by grant recipients, **Announced April 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10/>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, **Passed Senate Commerce Nov 13** (Denis)

## [ HYPERLINK

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/senate-bill/1087" ]** – Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, same as HR 2205, **SEPW hearing Nov 19** (Denis)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1982" ]** – Sullivan (AK), Save Our Seas 2.0 Act, **Passed Senate Jan 9** (Denis)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2353" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB sent other agencies' views for our review Mar 23** (Matt)

**[ HYPERLINK**

**"https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf" ]** – Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **Passed Senate Commerce Nov 13** (Matt)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2799/" ]** – Murkowski (AK), establishes energy-water nexus sustainability office managed by DOE and DOI, **Introduced Dec 17** (Denis)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/3051" ]** – Barrasso (WY), reauthorizes Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Incorporated into H.R. 925, Passed Senate Jan 9** (Denis, Sven)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3211>" ]**

– Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ **HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3480>" ]** – Shaheen (NH), PFAS Testing and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12; CBO inquiry Mar 19 re groundwater cleanup guidance** (Matt /Carolyn Levine)



Message

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**From:** Goodin, John [Goodin.John@epa.gov]  
**Sent:** 6/12/2020 2:35:55 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Shimkin, Martha [Shimkin.Martha@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE

Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won't speak for OFA, but my quick read of the crisp seven page attachment is that Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,  
John

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, June 12, 2020 10:25 AM  
**To:** Barger, Cindy <Barger.Cindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Can we do an evaluation of the letter with consistency with overall EPA direction.

---

**From:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Sent:** Friday, June 12, 2020 10:02 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Banister, Beverly <Banister.Beverly@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

Ntale Kajumba



NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 5/11/2020 5:10:46 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: EPA Cooperating Agency Letter (Yazoo)  
**Attachments:** Yazoo Coop. Agency Response (Draft) 5.8.20ccilo edit.docx

DELIBERATIVE

Attached are a few edits from my staff, none of which are deal-breakers and any of which could be rejected based on your discretion. In particular, Ex. 5 AC/DP

Ex. 5 AC/DP We did not share this with the NEPA office in OP, but at some point you may want to do so, time permitting. Thanks!

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Friday, May 8, 2020 5:14 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: EPA Cooperating Agency Letter (Yazoo)

Ex. 5 Deliberative Process (DP) I also think perhaps Ex. 5 Deliberative Process (DP)  
Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On May 8, 2020, at 5:05 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

Mary,

The substance of the letter is absolutely fine. Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

If you or David disagree I don't feel that strongly.

Lee

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**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Friday, May 8, 2020 4:43 PM



**To:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** Fwd: EPA Cooperating Agency Letter (Yazoo)

*Internal/deliberative*

Lee and David,

This is the draft letter my folks have drafted to agree to being a cooperating agency on the Yazoo SEIS. I'd like your thoughts before I discuss edits with folks. At one point Lee noted that he had some thoughts on **Ex. 5 Deliberative Process (DP)**

Do you have time for a call early next week? Lee, I will give a call Monday to touch base.

I hope you both are well. Have a great weekend,  
Mary

Sent from my iPhone

Begin forwarded message:

**From:** "Kajumba, Ntale" <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>

**Date:** May 8, 2020 at 2:32:23 PM EDT

**To:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>

**Cc:** "Hicks, Matt" <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>, "Fite, Mark" <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>,

"Ghosh, Mita" <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>, "Palmer, Leif" <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>,

"Banister, Beverly" <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>, "Ashbee, Blake"

<[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>

**Subject:** EPA Cooperating Agency Letter (Yazoo)

Hi Mary,

Attached is a preliminary response for the EPA Yazoo Cooperating Agency Letter that Matt and I worked on for your initial conversations with HQs. Others will get a chance to review the letter next week including the Office of General Counsel.

Thanks,

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 6/15/2020 3:01:24 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** 2 small edits - needing Dave's clearance - on his Sept 2019 QFRs  
**Attachments:** For Clearance\_CLEAN\_EPA Response to OMB Passback\_06-10-20\_QFRs House TI CWA Hearing 09-18-19\_Passback2.docx

**Importance:** High

INTERNAL/DELIBERATIVE

Janita,

As mentioned at staff meeting this morning, two other small edits on pages 9 (Maui) and 12 (Yazoo). Travis in OCIR has already run the Maui edit by David Fotouhi and he/OGC is good with it. The Yazoo edit is minor. Hopefully, Dave will be ok with these as is. Once he clears, OCIR will work to get these responses to the Committee.

Thanks,  
Greg



Message

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**From:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Sent:** 11/6/2020 1:43:53 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** RE: Question

Sure, how about if Brian and I call you after.

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: Ex. 6 Personal Privacy (PP)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, November 06, 2020 8:14 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Subject:** Question

Russ,

After this call can you call me on Yazoo. I am having trouble understanding why Ex. 5 Deliberative Process (DP)

Lee



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 4/16/2020 2:06:10 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** FW: Corps Yazoo EIS FR notice

FYI

---

**From:** Klasen, Matthew <Klasen.Matthew@epa.gov>  
**Sent:** Thursday, April 16, 2020 9:39 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>  
**Subject:** Corps Yazoo EIS FR notice

Just saw this (via CQ), published in today's Federal Register.

<https://www.federalregister.gov/documents/2020/04/16/2020-07966/notice-of-intent-to-prepare-supplemental-environmental-impact-statement-for-the-yazoo-area-pump>

-Matt

## SUMMARY:

The U.S. Army Corps of Engineers ("USACE"), Vicksburg District, is announcing its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the Yazoo Basin Reformulation Study, Yazoo Backwater Area, 58 FR 52, 103 (October 6, 1993). Recent floods and new data on the environment in the Yazoo Backwater Area prompted this new project proposal. In 9 out of the last 10 years, the Yazoo Backwater Area has experienced significant flooding. In particular, the historic flood of 2019 caused two deaths, caused hundreds of millions of dollars in damages, flooded over 600 homes, and significantly adversely affected the aquatic and terrestrial environment. The recurring flooding has demonstrated the need to complete the Yazoo Area Pump Project feature. New, previously unavailable data indicates that the environmental impacts to wetlands and other resources from a pumping plant would be far less than calculated in the 2007 FSEIS. The Supplemental Environmental Impact Statement will tier from and update the 2007 FSEIS with new data. It will not reformulate the broad array of alternatives previously examined in the 2007 FSEIS, but will analyze a new project proposal to build the pump project (the Proposed Action) in light of the new data. The Supplemental Environmental Impact Statement will also examine environmental measures to mitigate the low dissolved oxygen content in the Yazoo Backwater Area, which is currently detrimental to aquatic species.



-----  
Matt Klasen  
U.S. Environmental Protection Agency  
Office of Congressional Affairs  
cell [Ex. 6 Personal Privacy (PP)]



Message

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**From:** Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**Sent:** 6/12/2020 2:02:22 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Banister, Beverly [Banister.Beverly@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project  
**Attachments:** YBA Scoping (Internal Draft )\_11June2020.docx

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**

NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



## **Senate Committee on Environment and Public Works**

Minority themes: COVID Response, Enforcement discretion

### **Majority**

- Chairman John Barrasso (R-WY)
  - WOTUS, 401 certification, NARS letter, Small System Flexibility on SRFs
- Senator Jim Inhofe (R-OK)
- Senator Shelley Moore Capito (R-WV)
  - PFAS, Small Drinking Water Systems
- Senator Kevin Cramer (R-ND)
- Senator Mike Braun (R-IN)
  - WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)
  - WIIN Grants, Save Our Seas 2.0 Act (co-sponsor)
- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS

### **Minority**

- Ranking Member Tom Carper (D-DE)
  - PFAS, WOTUS, 401, Perchlorate
- Senator Ben Cardin (D-MD)
  - Chesapeake Bay, Water Infrastructure, SRFs, WIIN grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
  - Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
  - Columbia River
- Senator Kirsten Gillibrand (D-NY)
  - PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
  - Lead in drinking water, Environmental Justice, SRF transfer flexibility extension
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 5/8/2020 9:13:55 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Re: EPA Cooperating Agency Letter (Yazoo)

Ex. 5 Deliberative Process (DP)

I also think perhaps

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On May 8, 2020, at 5:05 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

Mary,

The substance of the letter is absolutely fine.

Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

If you or David disagree I don't feel that strongly.

Lee

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Friday, May 8, 2020 4:43 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Fwd: EPA Cooperating Agency Letter (Yazoo)

*Internal/deliberative*

Lee and David,

This is the draft letter my folks have drafted to agree to being a cooperating agency on the Yazoo SEIS. I'd like your thoughts before I discuss edits with folks. At one point Lee noted that he had some thoughts on **Ex. 5 Deliberative Process (DP)**

Do you have time for a call early next week? Lee, I will give a call Monday to touch base.

I hope you both are well. Have a great weekend,  
Mary

Sent from my iPhone

Begin forwarded message:



**From:** "Kajumba, Ntale" <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>  
**Date:** May 8, 2020 at 2:32:23 PM EDT  
**To:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** "Hicks, Matt" <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>, "Fite, Mark" <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>, "Ghosh, Mita" <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>, "Palmer, Leif" <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>, "Banister, Beverly" <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>, "Ashbee, Blake" <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>  
**Subject:** EPA Cooperating Agency Letter (Yazoo)

Hi Mary,

Attached is a preliminary response for the EPA Yazoo Cooperating Agency Letter that Matt and I worked on for your initial conversations with HQs. Others will get a chance to review the letter next week including the Office of General Counsel.

Thanks,

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 1/22/2020 5:43:00 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: General Discussion - Yazoo

Mary, Blake, do you know if this invite is for the briefing we discussed on the phone earlier today? I think we would need to give our staffs more lead time to prepare, but I defer to you if there are no other times available.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Johnson, Belinda <[Johnson.Belinda@epa.gov](mailto:Johnson.Belinda@epa.gov)> **On Behalf Of** R4RA Calendar  
**Sent:** Wednesday, January 22, 2020 12:29 PM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar  
**Cc:** Patrick, Monique; Penman, Crystal  
**Subject:** General Discussion - Yazoo  
**When:** Wednesday, January 22, 2020 5:00 PM-5:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Teleconference Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)



Message

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**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 3/23/2020 10:27:14 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Spraul, Greg [Spraul.Greg@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** Re: Disregard - RE: Topics for Friday's 3/27 Hearing Prep: Office of Water

Yes. The Senate finally woke up.

Sent from my iPhone

On Mar 23, 2020, at 6:16 PM, Aguirre, Janita <Aguirre.Janita@epa.gov> wrote:

All,

Given the Friday prep meeting with the Administrator canceled, I believe that means the 3/31 hearing also canceled.

Thank you,  
Janita



**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)



---


**From:** Aguirre, Janita  
**Sent:** Monday, March 23, 2020 4:40 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Ross, David P <ross.davidp@epa.gov>  
**Subject:** Topics for Friday's 2/27 Hearing Prep: Office of Water

Thank you so much! I'm really surprised this hearing is still on! I'm looping in others for awareness.

All – see Greg's message and suggestions below for Friday's prep meeting for the Administrator.

Thank you,  
Janita



  
**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)  


---

**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Monday, March 23, 2020 4:26 PM  
**To:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>  
**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** RE: Greg - Hearing Prep: Office of Water

Janita,

Unfortunately, Senate EPW has not cancelled the Administrator's hearing scheduled for 3/31, therefore OCIR is still planning on preparing him for the hearing. This meeting is OW's 30 min to help prep the Administrator. Prep should focus on the issues SEPW members will raise. Below are the likely issues. The SEPW members are also listed below. My suggestion is to have a main TP for each of these areas for Wheeler to use and to update him on any recent developments.

1. COVID 19 and the water sector – what are we doing? What else needs to be done?
2. PFAS – Fact Sheet is still current
3. WIFIA – update TP based on whether Seattle has closed and to reflect Morro Bay.
4. 401 – any updates that are public?
5. WOTUS – FR pub date?
6. Chesapeake Bay – Any other developments? There was a March milestone for Conowingo Dam.

**Senate Committee on Environment and Public Works**

**Majority**

- Chairman John Barrasso (R-WY)
- WOTUS, 401 certification, National Rivers & Streams Assessment (recent letter)
- Senator Jim Inhofe (R-OK)
- Senator Shelley Moore Capito (R-WV)
- PFAS
- Senator Kevin Cramer (R-ND)
- Senator Mike Braun (R-IN)



- WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)
- Save Our Seas 2.0 Act (co-sponsor), Small and Disadvantaged Grant, Pebble Mine, Canadian trans-boundary mining
- Senator John Boozman (R-AR)
- WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
- Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
- WOTUS

**Minority**

- Ranking Member Tom Carper (D-DE)
- PFAS, WOTUS
- Senator Ben Cardin (D-MD)
- Chesapeake Bay, WIIN lead grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
- Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
- Senator Kirsten Gillibrand (D-NY)
- PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
- Newark/lead
- Senator Ed Markey (D-MA)
- Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)



- Lead in drinking water
- Senator Chris Van Hollen (D-MD)
- Chesapeake Bay TMDL

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**From:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>  
**Sent:** Monday, March 23, 2020 3:06 PM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Greg - Hearing Prep: Office of Water

Hi Greg,

Can you seek details on the purpose of this meeting? As of 1:30pm today, the scheduler said the Administrator's March 31 Hearing is still on the books (not canceled or postponed yet). Let us know what you find out, so Dave and OW are prepared for Friday's prep meeting.

Thank you,  
 Janita

-----

Hearing Prep: Office of Water  
 Administrator's Office

/27/2020 11:30 AM  
 /27/2020 12:00 PM

Adm15Wheeler.Calendar

**Attendees:** Brazauskas, Joseph; Michael Molina ([molina.michael@epa.gov](mailto:molina.michael@epa.gov)); Hanson, Paige (Catherine) ([hanson.catherine@epa.gov](mailto:hanson.catherine@epa.gov)); Benevento, Douglas; Leopold, Matt ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)); Corry Schiermeyer ([schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)); Brittany Bolen ([bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)); Dankert, Charles M. (Charlie); Travis Voyles ([Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov)); David Bloom ([Bloom.David@epa.gov](mailto:Bloom.David@epa.gov)); Willey, Katharine; Ross, David P; Wildeman, Anna; Forsgren, Lee; McDonough, Owen; Kramer, Jessica L.



Message

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**From:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**Sent:** 10/5/2020 5:28:56 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**CC:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]  
**Subject:** RE: 404 question

Thanks, Lee. Let's get something on the books asap. I'm happy to participate and in the event Brian is busy, will relay accordingly.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, October 5, 2020 10:46 AM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Subject:** RE: 404 question

John,

I am happy to speak with Andrea and other OMB staff about EPA's role in the Yazoo pumps project process but, given recent discussions at the policy level, I would strongly encourage them to include the PAD in those discussions.

Regards,  
Lee

**D. Lee Forsgren**

Deputy Assistant Administrator  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania, Avenue NW  
Room 3219B WJC East Building  
Washington, DC 20460  
202-564-5700

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Monday, October 5, 2020 10:40 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Subject:** FW: 404 question

Morning, Lee—thinking you may be the more appropriate person to connect with Andrea on this one. Let me know if I should point her to Mel to line something up or you'll just connect directly.

Thanks,  
John

---

**From:** Grossman, Andrea L. EOP/OMB <[Ex. 6 Personal Privacy EOP (PP)]>  
**Sent:** Monday, October 05, 2020 9:29 AM



**To:** Goodin, John <Goodin.John@epa.gov>

**Cc:** Hickey, Mike J. EOP/OMB <Ex. 6 Personal Privacy EOP (PP)>

**Subject:** 404 question

John,

Do you have any availability for a quick call today? My OMB colleagues who cover Army Corps are working on briefing updates related to Yazoo Pumps and I want to make sure we understand the latest from EPA on it as well.

Thanks,

Andrea Grossman  
Program Examiner  
OMB Environment Branch



Message

---

**From:** Jones, Aaryn [Jones.Aaryn@epa.gov]  
**Sent:** 1/15/2020 6:55:41 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Yazoo presentation  
**Attachments:** MVD EPA Meeting 15 Jan 2020 v1.pdf

Hi all,

Hoping you already got this, but sending just in case.

Aaryn Jones  
Physical Scientist  
Land, Chemicals and Redevelopment Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth St, S.W.  
Atlanta, GA 30303  
(404) 562-8969  
[jones.aaryn@epa.gov](mailto:jones.aaryn@epa.gov)



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 1/22/2020 5:32:35 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: General Discussion - Yazoo

Lee, do you know if this the briefing we discussed on the phone earlier today? I think we'd need to give our staffs more lead time to prepare.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Johnson, Belinda <Johnson.Belinda@epa.gov> **On Behalf Of** R4RA Calendar  
**Sent:** Wednesday, January 22, 2020 12:29 PM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar  
**Cc:** Patrick, Monique; Penman, Crystal  
**Subject:** General Discussion - Yazoo  
**When:** Wednesday, January 22, 2020 5:00 PM-5:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Teleconference Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)



Message

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**From:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Sent:** 3/23/2020 10:16:57 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Ross, David P [ross.davidp@epa.gov]  
**Subject:** Disregard - RE: Topics for Friday's 3/27 Hearing Prep: Office of Water

All,

Given the Friday prep meeting with the Administrator canceled, I believe that means the 3/31 hearing also canceled.

Thank you,  
Janita

**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

---

**From:** Aguirre, Janita  
**Sent:** Monday, March 23, 2020 4:40 PM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>; Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>; McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** Topics for Friday's 2/27 Hearing Prep: Office of Water

Thank you so much! I'm really surprised this hearing is still on! I'm looping in others for awareness.

All – see Greg's message and suggestions below for Friday's prep meeting for the Administrator.

Thank you,  
Janita

**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

---

**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Monday, March 23, 2020 4:26 PM  
**To:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>



Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

Subject: RE: Greg - Hearing Prep: Office of Water

Janita,

Unfortunately, Senate EPW has not cancelled the Administrator's hearing scheduled for 3/31, therefore OCIR is still planning on preparing him for the hearing. This meeting is OW's 30 min to help prep the Administrator. Prep should focus on the issues SEPW members will raise. Below are the likely issues. The SEPW members are also listed below. My suggestion is to have a main TP for each of these areas for Wheeler to use and to update him on any recent developments.

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2. PFAS – Fact Sheet is still current
3. WIFIA – update TP based on whether Seattle has closed and to reflect Morro Bay.
4. 401 – any updates that are public?
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**Senate Committee on Environment and Public Works**

**Majority**

- Chairman John Barrasso (R-WY)
  - WOTUS, 401 certification, National Rivers & Streams Assessment (recent letter)
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- Senator Shelley Moore Capito (R-WV)
  - PFAS
- Senator Kevin Cramer (R-ND)
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- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS

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- Ranking Member Tom Carper (D-DE)
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- Senator Ben Cardin D-MD)
  - Chesapeake Bay, WIIN lead grants



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- Senator Sheldon Whitehouse (D-RI)
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- Senator Kirsten Gillibrand (D-NY)
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- Senator Cory Booker (D-NJ)
  - Newark/lead
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay TMDL

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**From:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>

**Sent:** Monday, March 23, 2020 3:06 PM

**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>

**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Subject:** Greg - Hearing Prep: Office of Water

Hi Greg,

Can you seek details on the purpose of this meeting? As of 1:30pm today, the scheduler said the Administrator's March 31 Hearing is still on the books (not canceled or postponed yet). Let us know what you find out, so Dave and OW are prepared for Friday's prep meeting.

Thank you,

Janita

-----  
**Subject:** Hearing Prep: Office of Water

**Location:** Administrator's Office

**Start:** Fri 3/27/2020 11:30 AM

**End:** Fri 3/27/2020 12:00 PM

**Organizer:** Adm15Wheeler.Calendar

**Required Attendees:** Brazauskas, Joseph; Michael Molina ([molina.michael@epa.gov](mailto:molina.michael@epa.gov)); Hanson, Paige (Catherine) ([hanson.catherine@epa.gov](mailto:hanson.catherine@epa.gov)); Benevento, Douglas; Leopold. Matt ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)); Corry Schiermeyer ([schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)); Brittany Bolen ([bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)); Dankert, Charles M. (Charlie); Travis Voyles ([Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov)); David Bloom ([Bloom.David@epa.gov](mailto:Bloom.David@epa.gov)); Willey, Katharine; Ross, David P; Wildeman, Anna; Forsgren, Lee; McDonough, Owen; Kramer, Jessica L.



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 3/23/2020 8:42:28 PM  
**To:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Greg - Hearing Prep: Office of Water

We can discuss at the check in

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**From:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Sent:** Monday, March 23, 2020 4:39 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Greg - Hearing Prep: Office of Water

We don't have a fact sheet on COVID, should one be prepared at this point?

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**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Monday, March 23, 2020 4:26 PM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Greg - Hearing Prep: Office of Water

Janita,

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  - Lead in drinking water
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  - Chesapeake Bay TMDL

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**From:** Aguirre, Janita <Aguirre.Janita@epa.gov>

**Sent:** Monday, March 23, 2020 3:06 PM

**To:** Spraul, Greg <Spraul.Greg@epa.gov>

**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

**Subject:** Greg - Hearing Prep: Office of Water

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**Organizer:** Adm15Wheeler.Calendar

**Required Attendees:** Brazauskas, Joseph; Michael Molina ([molina.michael@epa.gov](mailto:molina.michael@epa.gov)); Hanson, Paige (Catherine) ([hanson.catherine@epa.gov](mailto:hanson.catherine@epa.gov)); Benevento, Douglas; Leopold, Matt ([leopold.Matt@epa.gov](mailto:leopold.Matt@epa.gov)); Corry Schiermeyer ([schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)); Brittany Bolen ([bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)); Dankert, Charles M. (Charlie); Travis Voyles ([Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov)); David Bloom ([Bloom.David@epa.gov](mailto:Bloom.David@epa.gov)); Willey, Katharine; Ross, David P; Wildeman, Anna; Forsgren, Lee; McDonough, Owen; Kramer, Jessica L.



Message

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**From:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Sent:** 3/23/2020 8:39:58 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Ross, David P [ross.davidp@epa.gov]  
**Subject:** Topics for Friday's 2/27 Hearing Prep: Office of Water

Thank you so much! I'm really surprised this hearing is still on! I'm looping in others for awareness.

**All** – see Greg's message and suggestions below for Friday's prep meeting for the Administrator.

Thank you,  
Janita

**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

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## Appointment

---

**From:** Jones, Aaryn [Jones.Aaryn@epa.gov]  
**Sent:** 1/15/2020 6:46:12 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
  
**Subject:** FW: (Call-in added) General Discussion with MVD US Army Corps of Engineers  
**Attachments:** MVD EPA Meeting 15 Jan 2020 v1.pdf; Yazoo\_Backwater\_Project\_Features\_01142020.pdf  
**Location:** 61 Forsyth Street SW Atlanta, GA  
  
**Start:** 1/15/2020 6:30:00 PM  
**End:** 1/15/2020 7:30:00 PM  
**Show Time As:** Tentative

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Friday, December 27, 2019 11:12 AM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Ashbee, Blake; Kaiser, Russell; Gettle, Jeaneanne; rich.feibelman@usace.army.mil  
**Cc:** Jenkins, Brandi; Frazer, Brian; Goodin, John; Zapata, Cesar; Hough, Palmer; Nalven, Heidi; Calli, Rosemary; McGill, Thomas; Ainslie, William; Penman, Crystal  
**Subject:** (Call-in added) General Discussion with MVD US Army Corps of Engineers  
**When:** Wednesday, January 15, 2020 1:30 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 61 Forsyth Street SW Atlanta, GA

Call-in Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

The Sam Nunn Atlanta Federal Center (SNAFC) is located at **61 Forsyth St., SW Atlanta, GA 30303**. The easiest route from the airport is the MARTA train system just follow the signs. Take MARTA to the Five Points Train Station, exit at the Alabama/Forsyth St. side of the station the SNAFC is located directly across from the Five Points MARTA Station (behind the McDonald's). Uber is also a choice; should you choose to drive there are several public parking lots located near the building, with prices ranging from about \$10-\$20.

**Security Procedures:** The SNAFC is a full security building a government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared through security and arrive for the meeting on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. After you have signed in and received a visitor badge please proceed to the 9<sup>th</sup> floor (2<sup>ND</sup> bank of elevators to the right of the security desk) and check in with the EPA receptionist. Please ask them to call x28357 to be escorted to the RA Office. If you have any additional questions or concerns, please feel free to contact me at 404-562-8357. Thank you



## ARMY CORPS YAZOO PUMPS PROJECT (MISSISSIPPI)

### **BACKGROUND:**

- The Yazoo Backwater Area Pumps Project is a U.S. Army Corps of Engineers (Corps) Civil Works project designed to address flooding concerns in a 630,000-acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi. The estimated \$200+ million project was to be fully federally funded with no local cost-share.
- Project construction and operation, under a range of alternatives evaluated in the Final Supplemental Environmental Impact Statement, would have adversely impacted between 28,400 and 118,400 acres of wetlands and other waters of the United States.
- In 2008, EPA determined that these impacts would result in unacceptable adverse effects on fishery areas and wildlife and vetoed the project by issuing a Final Determination under Clean Water Act (CWA) Section 404(c) prohibiting the discharge of dredged or fill material into wetlands and other waters of the United States in connection with the construction of the proposed project.
- In 2018, an unsuccessful rider would have directed the Corps to begin construction on the Yazoo pumps project despite the 2008 CWA Section 404(c) Final Determination.
- In October 2019, at the request of **Sen. Wicker's** office, EPA's Deputy Assistant Administrator for Water, Lee Forsgren, and Regional Administrator Mary Walker participated in a listening session with residents in Rolling Fork, MS.
- In March 2019, then Acting Regional Administrator Mary Walker met with Corps General Richard G. Kaiser to tour the Yazoo Backwater Area and discuss the issue.
- On October 21, 2019 EPA Region 4 Administrator Mary Walker and Deputy Assistant Administrator for Water Lee Forsgren participated in a listening session where we had the opportunity to hear first-hand from residents.
- In April 2020, the Corps put out for public notice of intent to prepare and issue a Supplemental Environmental Impact Statement on the revised project, including a new Clean Water Act section 404(b)(1) evaluation. The April notice indicated the Corps intended to "analyze a new project proposal to build the pump project . . . in light of the new data." The Corps also stated that "[n]ew data shows that previously calculated adverse impacts to wetlands in the 2007 FSEIS overestimated the potential impacts of the proposed pumping plant given available data at the time."
- The April notice indicated that the Corps is accepting public comments on the scoping of the Supplemental EIS through June 15, 2020, and that the Corps anticipated releasing a draft Supplemental EIS in October 2020, after which time the Corps intends to hold a virtual public meeting and seek public comments.
- EPA has agreed to be a cooperating agency on the Corps' Supplemental EIS process for the revised project and currently reviewing information received from the Corps.

### **KEY POINTS:**

- **Sen. Roger Wicker (R-MS), Sen. Cindy Hyde-Smith (R-MS),** Rep. Bennie Thompson (D-MS) and former Governor Phil Bryant (R-MS) have all engaged with EPA on this issue (correspondence, meetings, calls) in support of the pump project.
- Dozens of residents have written to EPA in 2019 and 2020 in support of the pump project, while hunting, fishing and other conservation groups oppose the project because of its projected extensive impacts to wetlands providing important habitat for fish and wildlife.



Tax-payer watchdog groups and economists question the flood reduction benefits of the proposed project and criticize it as wasteful.

**TALKING POINTS:**

- The EPA recognizes the disruptive impacts of the recent flooding along the lower Mississippi River and the Yazoo Backwater Area on the day-to-day lives of Mississippians and the economy of the area.
- We remain committed to working actively and cooperatively with the Corps on the potential flood control options they are considering as they relate to our Clean Water Act programs. Our shared goal is to support a long-term, viable solution.
- EPA has agreed to be a cooperating agency on the Corps' Supplemental EIS process for the revised project.



Message

---

**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 2/27/2020 4:38:34 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 3.2.2020.docx

Please take a look at our attached report and let us know if any questions – includes link to today's House Energy and Commerce budget hearing. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP)

 (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides and Toxics Team**  
**Week of March 2, 2020**

**NEW:**

Sen. Wicker (MS) – Bug light pesticide imports w/OCSP, R4 (Sven)  
Sen. Murkowski (AK) – Inquiry on PFAS testing in fish and game w/OW, ORD (Matt)  
Rep. Trahan (MA) question re: AWIA Sec. 221 sewer grant status w/OW (Matt)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

**Feb 21** – Notification on TSCA TCE draft risk evaluation availability for public comment w/OCSP (Sven)  
**Feb 21** – Briefing for House Oversight & Reform re: PFAS Action Plan w/OW, ORD, OLEM, OCSP (Matt)  
**Feb 24** – Rep. Loudermilk (GA) inquiry on fragrance chemical applications w/OCSP, R4 (Davina/Sven)  
**Feb 24** – Notification on EPA at 50: Emerging Water Challenges w/OW (Sven)  
**Feb 25** – Sen. Booker (NJ) staff call on mercury flooring w/OCSP, OLEM, OAR, ORD, OITA, R2 (Sven)  
**Feb 25** – Ft. Lauderdale officials and Sen. Rubio (FL), Rep. Deutsch (FL) staff re: sewer funding w/OW, R4 (Arnita/Matt)  
**Feb 26** – Rep. Scalise (LA) staff briefing on Lake Pontchartrain program w/R6 staff (Denis/Cary)  
**Feb 26** – Hill notification on PFAS Action Plan: Program Update (Matt)  
**Feb 27** – Rep. Calvert (CA) staff briefing request on animal testing w/OCSP, OCFO (Sven/Ed Walsh)  
**Feb 27** – Rep. Flores (TX) request on funding for arsenic in drinking wells w/OW (JohnMark/Matt)  
**Feb 28** – House T&I budget briefing on Clean Water Act programs w/OW (Denis)  
**Feb 28** – Approps staff call re: 45(q) tax credit and SDWA UIC Class VI w/OW (Holt/Matt)  
**Week of March 2** – Rep. Kaptur (OH) staff briefing on HABs program w/OW (Denis)  
**Pending** – Sen. Hirono (HI) briefing request on alternative pathogen indicators w/OW (Denis)  
**Pending** – Rep. Hudson (NC) constituent question on retention ponds w/R4, OW (Denis)  
**Pending** – Sen. Duckworth (IL) inquiry on turkey farm discharge w/OW, R5 (Denis)  
**Pending** – House Science briefing request on HABs w/ORD, OW (Demond/Denis)  
**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Rep. Meuser (PA) stormwater questions w/R3, OW (Denis)  
**Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSP (Sven)  
**Pending** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – Rep. Cuellar (TX) inquiry on USMCA border water funding w/OW, OITA (ACC team, Matt)  
**Pending** – PFAS briefings for House Approps and House Science w/cross-HQ team (Matt)  
**Pending** – SEPW QFRs from 3/28 PFAS hearing w/OW, OLEM, OCSP, ORD (Matt)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Sven)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Sven)

**HEARINGS/FORUMS:**

Topic: [ [HYPERLINK "https://transportation.house.gov/committee-activity/hearings/proposals-for-a-water-resources-development-act-of-2020-members-day-hearing"](https://transportation.house.gov/committee-activity/hearings/proposals-for-a-water-resources-development-act-of-2020-members-day-hearing) ]



Committee: House Transportation & Infrastructure, Subcommittee on Water Resources & Env't  
Date: Thursday, February 27, 2020 at 10:00 am  
EPA Witness: None  
Contact: Matt Klasen

Topic: [ HYPERLINK "https://energycommerce.house.gov/committee-activity/hearings/hearing-on-the-fiscal-year-2021-epa-budget" ]

Committee: House Energy & Commerce, Subcommittee on Environment & Climate Change  
Date: Thursday, February 27, 2020 at 10:00 am  
EPA Witness: Administrator Andrew Wheeler  
Contact: Tony Frye/JohnMark Kolb

Topic: [ HYPERLINK "https://appropriations.house.gov/events/hearings/us-environmental-protection-agency-budget-request-for-fy2021" ]

Committee: House Appropriations, Subcommittee on Interior and Environment  
Date: Wednesday, March 4, 2020 at 9:30 am  
EPA Witness: Administrator Andrew Wheeler  
Contact: Tony Frye/JohnMark Kolb

Topic: EPA FY2021 Budget  
Committee: House Transportation & Infrastructure, Subcommittee on Water Resources & Env't  
Date: (tent) Tues, March 31, 2020  
EPA Witness: (tent) OW, OLEM and USACE  
Contact: Denis Borum/Pamela Janifer

#### 116<sup>th</sup> CONGRESS ENACTED LEGISLATION:

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billIsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1" ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)**



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1689>" ]** /PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1790>" ]** /PL 116-92 – Inhofe (OK), NDAA including PFAS provisions on TSCA and TRI, Signed on Dec 20 (Sven, Matt)

### 116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/535>" ]** – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/729/>" ]** – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/925/>" ]** – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed House Nov 20, Amended and passed Senate via unanimous consent Jan 9** (Denis, Sven)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **Introduced Mar 7, HEC hearing May 8, Passed HEC Nov 19 (Sven)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24. **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), Promoting United Government Efforts To Save Our Sound Act (“PUGET SOS Act”). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound. **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]**

– Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4891/text" ]** – Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28 (Matt)**,

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5347/" ]** – Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28 (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5539" ]** – Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535 (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5540/" ]** – Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535 (Matt)**



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]** – Waltz (FL), Clean Water Allotment

Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5684>" ]** – Sarbanes (MD), Chesapeake Bay Science,

Education, and Ecosystem Enhancement Act, Reauthorizes NOAA's Chesapeake Bay office, **Introduced Jan 27** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5799>" ]** – Peterson (MN), Bridging Responsible

Agricultural Conservation Efforts Act, Clarifies EPA, Corps, and USDA wetlands regulations, and requires "normal farming practices" rulemaking, **Introduced Feb 7** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5856>" ]** – Sewell (AL), Decentralized Wastewater

Grant Act, Creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as S. 3274, **Introduced Feb 11** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5857>" ]** – Ocasio-Cortez (NY), Fracking Ban Act, Bans

hydraulic fracturing operations beginning in 2025, Same as S. 3247, **Introduced Feb 12** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5902/text>" ] – Mast (FL), MICRO Plastics Act, Creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as S. 3306, **Introduced Feb 13** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, Introduced Jan 3, **Passed Senate Commerce Nov 13** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1982>" ]**

– Sullivan (AK), Save Our Seas 2.0 Act, Amended and passed Senate via unanimous consent Jan 9 (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2353>" ]**

– Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **Passed Senate Homeland Security and Govt Affairs Feb 3** (Matt)

[ **HYPERLINK**

**"<https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf>" ]**

– Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **introduced Sept 19, Passed Senate Commerce Nov 13** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]**

– Murkowski (AK), Nexus of Energy and



Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, **Reported to Senate Dec 17** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051>" ]** – Barrasso (WY), America's Conservation

Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3211>" ]** – Rubio (FL), Clean Water Allotment

Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3221>" ] – Booker (NJ), Farm System Reform Act, Bans large CAFOS and makes integrators liable for air & water discharges, **Introduced Jan 21** (Denis)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3227>" ] – Sanders (VT), Prevent Future American Sickness (PFAS) Act: Requires EPA CERCLA haz-substance designation & HAPs listing for all PFAS; requires CWA PFAS pretreatment standards; creates new grant programs for drinking water, POTWs, and water infrastructure; bans PFAS in food uses; prohibits PFAS incineration; and requires DOD report on AFFF supplies, **Introduced Jan 28** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3247>" ] – Sanders (VT), Fracking Ban Act, bans hydraulic fracturing operations beginning in 2025, Same as H.R. 5857, **Introduced Jan 28** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3274>" ]** – Booker (NJ), Decentralized Wastewater

Grant Act, creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as H.R. 5856, **Introduced Feb 11** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3306/>" ] – Merkley (OR), MICRO Plastics Act, creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as H.R. 5902, **Introduced Feb 13** (Denis)



Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 3/18/2020 1:55:41 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Frye, Tony (Robert) [frye.robert@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**Subject:** RE: Yazoo

You are all set. USACE has been informed EPA will be calling in.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:51 AM  
**To:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Frye, Tony (Robert) <frye.robert@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** Re: Yazoo

Thanks

Sent from my iPhone

On Mar 18, 2020, at 9:49 AM, Mejias, Melissa <mejias.melissa@epa.gov> wrote:

Lee - I have added it to your calendar.

Call in: Ex. 6 Personal Privacy (PP)  
PIN: Ex. 6 Personal Privacy (PP)

Mel

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:35 AM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** Re: Yazoo

Mary

Can we get the call in number.

Lee

Sent from my iPhone

On Mar 18, 2020, at 9:34 AM, Frye, Tony (Robert) <frye.robert@epa.gov> wrote:



Thank you! I'll join the call. Let me know if I can be helpful with anything leading up to the call

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Tuesday, March 17, 2020 3:39 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>  
**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.

Thanks,  
Mary

---

**From:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?

Thanks,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Subject:** Fwd: Yazoo

Per our conversation



Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
Cc: Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Sent:** 3/23/2020 8:39:19 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Greg - Hearing Prep: Office of Water

We don't have a fact sheet on COVID, should one be prepared at this point?

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Monday, March 23, 2020 4:26 PM  
**To:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Greg - Hearing Prep: Office of Water

Janita,

Unfortunately, Senate EPW has not cancelled the Administrator's hearing scheduled for 3/31, therefore OCIR is still planning on preparing him for the hearing. This meeting is OW's 30 min to help prep the Administrator. Prep should focus on the issues SEPW members will raise. Below are the likely issues. The SEPW members are also listed below. My suggestion is to have a main TP for each of these areas for Wheeler to use and to update him on any recent developments.

1. COVID 19 and the water sector – what are we doing? What else needs to be done?
2. PFAS – Fact Sheet is still current
3. WIFIA – update TP based on whether Seattle has closed and to reflect Morro Bay.
4. 401 – any updates that are public?
5. WOTUS – FR pub date?
6. Chesapeake Bay – Any other developments? There was a March milestone for Conowingo Dam.

**Senate Committee on Environment and Public Works**

**Majority**

- Chairman John Barrasso (R-WY)
  - WOTUS, 401 certification, National Rivers & Streams Assessment (recent letter)
- Senator Jim Inhofe (R-OK)
- Senator Shelley Moore Capito (R-WV)
  - PFAS
- Senator Kevin Cramer (R-ND)
- Senator Mike Braun (R-IN)
  - WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)



- Save Our Seas 2.0 Act (co-sponsor), Small and Disadvantaged Grant, Pebble Mine, Canadian trans-boundary mining
- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS

**Minority**

- Ranking Member Tom Carper (D-DE)
  - PFAS, WOTUS
- Senator Ben Cardin (D-MD)
  - Chesapeake Bay, WIIN lead grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
  - Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
- Senator Kirsten Gillibrand (D-NY)
  - PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
  - Newark/lead
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay TMDL

---

**From:** Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>

**Sent:** Monday, March 23, 2020 3:06 PM

**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>

**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Subject:** Greg - Hearing Prep: Office of Water

Hi Greg,

Can you seek details on the purpose of this meeting? As of 1:30pm today, the scheduler said the Administrator's March 31 Hearing is still on the books (not canceled or postponed yet). Let us know what you find out, so Dave and OW are prepared for Friday's prep meeting.

Thank you,  
Janita

-----  
**Subject:** Hearing Prep: Office of Water  
**Location:** Administrator's Office



**Start:** Fri 3/27/2020 11:30 AM  
**End:** Fri 3/27/2020 12:00 PM

**Organizer:** Adm15Wheeler.Calendar

**Required Attendees:** Brazauskas, Joseph; Michael Molina ([molina.michael@epa.gov](mailto:molina.michael@epa.gov)); Hanson, Paige (Catherine) ([hanson.catherine@epa.gov](mailto:hanson.catherine@epa.gov)); Benevento, Douglas; Leopold, Matt ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)); Corry Schiermeyer ([schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)); Brittany Bolen ([bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)); Dankert, Charles M. (Charlie); Travis Voyles ([Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov)); David Bloom ([Bloom.David@epa.gov](mailto:Bloom.David@epa.gov)); Willey, Katharine; Ross, David P; Wildeman, Anna; Forsgren, Lee; McDonough, Owen; Kramer, Jessica L.



**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 3/23/2020 8:26:22 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Greg - Hearing Prep: Office of Water

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  - PFAS
- Senator Kevin Cramer (R-ND)
- Senator Mike Braun (R-IN)
  - WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)
  - Save Our Seas 2.0 Act (co-sponsor), Small and Disadvantaged Grant, Pebble Mine, Canadian trans-boundary mining
- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS



## **Minority**

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  - PFAS, WOTUS
- Senator Ben Cardin D-MD)
  - Chesapeake Bay, WIIN lead grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
  - Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
- Senator Kirsten Gillibrand (D-NY)
  - PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
  - Newark/lead
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay TMDL

---

**From:** Aguirre, Janita <Aguirre.Janita@epa.gov>

**Sent:** Monday, March 23, 2020 3:06 PM

**To:** Spraul, Greg <Spraul.Greg@epa.gov>

**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

**Subject:** Greg - Hearing Prep: Office of Water

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Janita

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**Subject:** Hearing Prep: Office of Water  
**Location:** Administrator's Office

**Start:** Fri 3/27/2020 11:30 AM  
**End:** Fri 3/27/2020 12:00 PM

**Organizer:** Adm15Wheeler.Calendar

**Required Attendees:** Brazauskas, Joseph; Michael Molina ([molina.michael@epa.gov](mailto:molina.michael@epa.gov)); Hanson, Paige (Catherine) ([hanson.catherine@epa.gov](mailto:hanson.catherine@epa.gov)); Benevento, Douglas; Leopold, Matt ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)); Corry Schiermeyer ([schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)); Brittany Bolen ([bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)); Dankert, Charles M. (Charlie); Travis Voyles ([Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov)); David Bloom ([Bloom.David@epa.gov](mailto:Bloom.David@epa.gov)); Willey, Katharine; Ross, David P; Wildeman, Anna; Forsgren, Lee; McDonough, Owen; Kramer, Jessica L.







Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 3/18/2020 1:49:42 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**Subject:** RE: Yazoo

Lee - I have added it to your calendar.

Call in: [Ex. 6 Personal Privacy (PP)]  
PIN: [Ex. 6 Personal Privacy (PP)]

Mel

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:35 AM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** Re: Yazoo

Mary

Can we get the call in number.

Lee

Sent from my iPhone

On Mar 18, 2020, at 9:34 AM, Frye, Tony (Robert) <frye.robert@epa.gov> wrote:

Thank you! I'll join the call. Let me know if I can be helpful with anything leading up to the call

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: [Ex. 6 Personal Privacy (PP)]

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Tuesday, March 17, 2020 3:39 PM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.



Thanks,  
Mary

---

**From:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?

Thanks,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
Cc: Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone



On Mar 16, 2020, at 5:41 PM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 1/22/2020 3:53:21 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo update

Yes – I will have an 1130 but at least we can touch base quickly. That would work for me.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, January 22, 2020 10:46 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Yazoo update

I need to talk with Anna on WOTUS at 11. Could we push to 11:15?

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 8:10 AM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary  
**Subject:** Yazoo update  
**When:** Wednesday, January 22, 2020 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Conference line [Ex. 6 Personal Privacy (PP)] ID# [Ex. 6 Personal Privacy (PP)]



Message

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**From:** Risley, David [Risley.David@epa.gov]  
**Sent:** 4/14/2020 9:42:15 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** FW: Please Uphold EPA's Yazoo Pumps Veto

Primarily FYI -- also a reminder of this annual issue starting to gain steam in 2020.

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell Ex. 6 Personal Privacy (PP)

-----Original Message-----

From: Hackel, Angela <Hackel.Angela@epa.gov>  
Sent: Tuesday, April 14, 2020 3:15 PM  
To: Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Risley, David <Risley.David@epa.gov>  
Subject: FW: Please Uphold EPA's Yazoo Pumps Veto

FYI.

-----Original Message-----

From: Chris Watson <watsonce@sbcglobal.net>  
Sent: Tuesday, April 14, 2020 3:12 PM  
To: Press <Press@epa.gov>  
Subject: Please Uphold EPA's Yazoo Pumps Veto

Dear Administrator Wheeler,

I am writing to urge you to uphold Environmental Protection Agency's (EPA) 2008 veto decision that halted the wasteful, environmentally destructive drainage project in the Mississippi Delta known as the Yazoo Backwater Pumps. Instead, I ask that EPA implement more effective flood risk management alternatives to help local communities recover from recent flooding and manage future flood risk.

I am someone who cares deeply about our country's natural resources. I understand that recent analyses by the Army Corps of Engineers determined that under the best-case scenario, 68 percent of the South Delta would continue to flood even with the Pumps in place. This finding supports past conclusions that the project is not designed to protect local communities from flooding; instead, 80 percent of the project benefits would be for agriculture by draining wetlands to intensify farming.

EPA's veto, only the 13th in the history of the Clean Water Act, was supported by tens of thousands of Americans. The George W. Bush administration conducted a rigorous analysis before issuing the veto based on the Pumps' environmental impacts. EPA also raised major concerns about the project's economics and found that less damaging, more affordable alternatives to floodplain management had not been adequately considered. The veto was upheld by a federal judge and affirmed by the 5th Circuit Court of Appeals.

Communities affected by flooding in the Mississippi Delta deserve practical, affordable solutions for managing flood risk and recovery. In 2000, EPA identified several alternative strategies for the Lower Yazoo River Basin that the Corps failed to consider and continues to sit on. These alternatives should be deployed immediately.

Please continue to uphold EPA's veto of the costly, ineffective Yazoo Pumps. Tell the Corps to instead employ the flood risk management alternatives outlined by the EPA in 2000 to provide critical, long-term relief for those affected.

Sincerely

Chris Watson  
8140 Wiebels Drive  
Knoxville, TN  
37931  
watsonce@sbcglobal.net



Message

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 1/22/2020 3:45:51 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Yazoo update

I need to talk with Anna on WOTUS at 11. Could we push to 11:15?

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 8:10 AM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary  
**Subject:** Yazoo update  
**When:** Wednesday, January 22, 2020 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Conference line Ex. 6 Personal Privacy (PP) ID# Ex. 6 Personal Privacy (PP)



Message

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**From:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Sent:** 3/18/2020 1:34:11 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**Subject:** RE: Yazoo

Thank you! I'll join the call. Let me know if I can be helpful with anything leading up to the call

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

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**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
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**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.

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Tony

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Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)



---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <[frye.robert@epa.gov](mailto:frye.robert@epa.gov)>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

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**To:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Subject:** RE: Yazoo

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-----Original Message-----

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, March 16, 2020 6:00 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Subject:** Re: Yazoo

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Sent from my iPhone

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Thanks.

Sent from my iPad



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 3/9/2020 8:52:29 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FB Yazoo ltr  
**Attachments:** 20-000-3763.pdf

FYI - FB letter sent to Wheeler re: Yazoo.

-----Original Message-----

**From:** Brown, Sineta <Brown.Sineta@epa.gov>  
**Sent:** Thursday, March 05, 2020 10:02 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>  
**Subject:** RE: CMS Courtesy Copy - Jacqueline Leavy - AX-20-000-3763

Sineta Brown  
Program Analyst/FOIA Coordinator for OW Office of Water Management and Operations Staff  
202-564-3666

-----Original Message-----

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Wednesday, March 4, 2020 7:49 PM  
**To:** Fields, Wanda <Fields.Wanda@epa.gov>  
**Cc:** Brown, Sineta <Brown.Sineta@epa.gov>  
**Subject:** FW: CMS Courtesy Copy - Jacqueline Leavy - AX-20-000-3763

Please send the PDF

-----Original Message-----

**From:** cmsadmin@epa.gov <cmsadmin@epa.gov>  
**Sent:** Friday, February 28, 2020 3:43 PM  
**To:** Fields, Wanda <Fields.Wanda@epa.gov>; Zipf, Lynn <Zipf.Lynn@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Strange, BarbaraA <Strange.BarbaraA@epa.gov>; Braschayko, Kelley <braschayko.kelley@epa.gov>  
**Subject:** CMS Courtesy Copy - Jacqueline Leavy - AX-20-000-3763

You are being alerted to control AX-20-000-3763. No action is currently required on your part, but you have been granted the ability to view the control by Jacqueline Leavy.

Summary Information -  
Control Number: AX-20-000-3763  
Control Subject: Reading File - Yazoo Backwater Pump Project  
From: Duvall, Zippy

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or [CMS.Information@epa.gov](mailto:CMS.Information@epa.gov).



Fri Feb 28 15:06:35 EST 2020  
"Hope, Brian" <Hope.Brian@epa.gov>  
FW: American Farm Bureau Federation Request  
To: "CMS.OEX" <cms.oex@epa.gov>; "Gaines, Cynthia" <Gaines.Cynthia@epa.gov>

---

Reading file

**From:** Marsha Bernard <marshab@fb.org> **On Behalf Of** Zippy Duvall  
**Sent:** Friday, February 28, 2020 2:49 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Subject:** American Farm Bureau Federation Request



February 28, 2020

The Honorable Andrew Wheeler  
Administrator, United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., Mail Code 1101A  
Washington, District of Columbia 20460

Dear Administrator Wheeler:

As President of the American Farm Bureau Federation, I am writing on behalf of the over 170,000 member families we represent in the state of Mississippi to seek your assistance on an urgent matter affecting the livelihood of thousands of Mississippi farmers.

In 2008, the Environmental Protection Agency formally issued a section 404 (c) veto of the Yazoo Backwater Pump Project in the South Delta of Mississippi under the authority of the Clean Water Act. This project is one of the final components of the Mississippi River and Tributaries Project (MR&T) enacted by the Flood Control Act of 1941 that has yet to be completed. In essence this pump station would provide flood relief for residents in the South Delta that are subject to backwater flooding from planned use of river control structures administered by the U.S. Army Corp of Engineers, under the MR&T plan.

In the spring of 2019 an estimated 550,000 total acres were completely flooded, which included 225,000 acres of farmland. As of the writing of this letter, there are currently 460,000 acres underwater, including 183,000 acres of farmland. This is a manmade problem and the continued flooding is causing major economic harm to the residents, businesses, and wildlife in these communities.

American Farm Bureau’s policy, which was updated and passed by our delegate body this year, states:

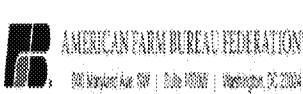
- “We support the reversal of the Environmental Protection Agency’s 2008 veto on the installation of the Yazoo Valley Backwater Pumping Station to relieve the serious and frequent flooding situation in the South Delta of Mississippi with installation of the pumping station.”
- “We support the immediate completion of all Yazoo Basin flood control projects, including the Yazoo Valley Backwater Project, and the installation of pumping stations to relieve the backwater flooding problems.”

With this policy in place and from recent discussions with our Mississippi membership, we renew our request that EPA reconsider the current 404 (c) veto your agency has in place for this important pump project **or pursue alternatives solutions to alleviate the backwater flooding, which is** affecting lives, farms, and economic activity in the South Delta.

Thank you in advance for considering this request.

Sincerely,





in session  
1:00-2:00  
enrty

Zippy Duvall  
American Farm Bureau Federation President



February 28, 2020

The Honorable Andrew Wheeler  
Administrator, United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., Mail Code 1101A  
Washington, District of Columbia 20460

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- “We support the immediate completion of all Yazoo Basin flood control projects, including the Yazoo Valley Backwater Project, and the installation of pumping stations to relieve the backwater flooding problems.”

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important pump project **or pursue alternatives solutions to alleviate the backwater flooding, which is** affecting lives, farms, and economic activity in the South Delta.

Thank you in advance for considering this request.

Sincerely,

A handwritten signature in black ink, reading "Zippy Duvall". The signature is written in a cursive, flowing style with a large initial "Z" and a prominent "D".

Zippy Duvall  
American Farm Bureau Federation President



## Appointment

---

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 1/22/2020 1:50:36 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]

**Subject:** Accepted: Yazoo update

**Location:** Conference line Ex. 6 Personal Privacy (PP) ID# Ex. 6 Personal Privacy (PP)

**Start:** 1/22/2020 4:00:00 PM  
**End:** 1/22/2020 4:30:00 PM

**Recurrence:** (none)



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 6/11/2020 11:19:55 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo Modeling Response

No comments from a legal perspective from me. Thanks, Mary.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Thursday, June 11, 2020 4:38 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Yazoo Modeling Response

Lee and David,

Attached are the draft comments on the Yazoo modeling data. These are due to the Corps by tomorrow COB. Please take a look and let me know if you have concerns.

Thanks  
Mary

---

**From:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Sent:** Thursday, June 11, 2020 4:33 PM  
**To:** Banister, Beverly <Banister.Beverly@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Cc:** Ghosh, Mita <Ghosh.Mita@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Ainslie, William <Ainslie.William@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>  
**Subject:** YBA Modeling Response

Hi Everyone,

Attached is our response to the Yazoo Backwater Area Modeling request from the USACE. During the cooperating agency meeting, they informally requested our feedback on the models that will be used in the Supplemental EIS. Attached is our response to that question that we plan to email COB tomorrow. If you have any questions or comments, please free to reach out to us at any time.

Thanks,

Ntale

**Ntale Kajumba**  
NEPA Section, Chief



Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 5/18/2020 12:23:10 PM  
**To:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Crawford, Tiffany [Crawford.Tiffany@epa.gov]  
**CC:** Vazquez, Sharon [Vazquez.Sharon@epa.gov]  
**Subject:** Proposed agenda for OW check in w/OCIR @ 8:30am  
**Attachments:** SEPW Members and Issues.docx; incoming\_mast\_01-29-20.pdf

**Ex. 6 Personal Privacy (PP)**

1. Water Topics and SEPW
2. Any additional guidance for 2:30pm prep session?
3. WRDA 2020 Views request
4. Mast Corps Letter
5. FYI - Alfredo joined GAO Private Water Rates Call (Schumer request)
6. Non-public info in GAO written responses – any other discussion?
7. GAO IRIS doc request to OW
8. Any other audit business?
9. PFAS Speaker Requests (Chamber and NGA)



## **Senate Committee on Environment and Public Works**

### **Majority**

- Chairman John Barrasso (R-WY)
  - WOTUS, 401 certification, NARS letter?
- Senator Jim Inhofe (R-OK)
- Senator Shelley Moore Capito (R-WV)
  - PFAS, Small Drinking Water Systems
- Senator Kevin Cramer (R-ND)
- Senator Mike Braun (R-IN)
  - WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)
  - WIIN Grants, Save Our Seas 2.0 Act (co-sponsor), Pebble Mine
- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Yazoo Pumps
- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS

### **Minority**

- Ranking Member Tom Carper (D-DE)
  - PFAS, WOTUS, Perchlorate
- Senator Ben Cardin (D-MD)
  - Chesapeake Bay, Water Infrastructure, SRFs, WIIN grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
  - Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
  - Columbia River
- Senator Kirsten Gillibrand (D-NY)
  - PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
  - Lead in drinking water
  - Environmental Justice
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 1/22/2020 1:20:31 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo - next steps

Thank you!

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 8:07 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Yazoo - next steps

Let's do 11:00. I will send a calendar invite.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, January 22, 2020 7:24 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Re: Yazoo - next steps

Sure. Could we try for 11? If that doesn't work, I have noon-1 as well.

Sent from my iPhone

On Jan 22, 2020, at 7:12 AM, Walker, Mary <walker.mary@epa.gov> wrote:

I'm available between 8-9:30, at 11, 12-1:30, and at 5:30 or later.

David, do any of these windows work for you?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 6:53 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone



On Jan 21, 2020, at 7:29 PM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.

Thanks,

Mary

<image002.png>

Mary Salmon Walker Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

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**From:** Jackson, Ryan [jackson.ryan@epa.gov]  
**Sent:** 2/11/2020 1:24:32 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]  
**Subject:** Re: Yazoo Briefing paper - for review.

I'd like for you to call me.

Ryan Jackson  
Chief of Staff  
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Feb 11, 2020, at 6:57 AM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

Ryan,

The preliminary EPA review of whether the previous veto is applicable to this project should be finished within two weeks, but we would not officially comment/officially review the new project until the Corps puts the project out for public comment. Because this is a Corps project they don't technically issue themselves a 404 permit. The equivalent of the 404 permit is called a 404(b)(1) analysis and would be part of their ROD on the new project. The Corps has said that if we were to determine that the 404 veto from 2008 probably didn't apply they could finish their NEPA document and put a draft ROD (including the 404(b)(1) analysis) out for comment in about six weeks. That would put them on a timeline to have a final ROD early this Fall.

Lee

Sent from my iPhone

On Feb 11, 2020, at 5:42 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

When will EPA conclude our review? Is the Corps proceeding with granting a 404 to the new project in the meantime and what is their timeline?



Ryan Jackson  
Chief of Staff  
U.S. EPA  
202-564-6999

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** February 10, 2020 at 7:46:09 PM EST  
**To:** "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Fotouhi, David" <Fotouhi.David@epa.gov>, "Walker, Mary" <walker.mary@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.

Ryan,

Here a briefing paper on where we stand on the Yazoo pump project for your review.

Let me know if you need anything else.

Respectfully,

Lee

<R4 MS Yazoo Pumps January 2020 Update-ow LDF (002).docx>



Message

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**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 4/24/2020 10:14:32 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Collazo Reyes, Yvette [CollazoReyes.Yvette@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 4.27.2020.docx

Please see our attached report featuring a high volume of disinfectant inquiries and responses. Wishing everyone a safe and healthy weekend and please don't drink the bleach. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  
Ex. 6 Personal Privacy (PP) (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides, and Toxics Team**  
**Week of April 27, 2020**

**Congress recessed**

**NEW:**

- Sen. Feinstein (CA) inquiry re: USMCA border water funding status (Matt/TBD)
- Sen. Sullivan (AK) renewed inquiry for TA on draft compensatory mitigation bill (Denis)
- Sen. Sullivan (AK) TA request re: Alaska PFAS incineration (Holt/Carolyn/Matt)
- House & Senate approps requests re: OW items (AIS, CSOs, Lake Champlain, SRF additional subsidy, HABs, WIFIA, and GLRI) (Ed Walsh/all)
- House E&C (min) inquiry re: SDWA authorities for drinking-water chem supply chain w/ OW (Matt)
- Rep. Burgess (TX) inquiry on Denton, TX re: impounded UV lights for water disinfection w/R6, OCSPP, OECA, OW (Sven/Carolyn/Austin Vela)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

- Apr 16** – Comments to DOD on PFAS NDAA drafting assistance w/OECA, OLEM, OW, ORD (Carolyn Levine/Matt)
- Apr 16** – Notification on draft scopes for 7 remaining high priority chemicals w/OCSPP (Sven)
- Apr 16** – Sen. Portman/Reps. Johnson/Joyce (OH) inquiry on De Nora's disinfectant w/OCSPP (Sven)
- Apr 16** – Sen. Portman (OH) inquiry on behalf of Gilla disinfectant w/OCSPP (Sven)
- Apr 16** – Rep. DelBene (OR) question on Briotech disinfectant w/OCSPP (Sven)
- Apr 16** – Sen. Cassidy (LA) update on changes to alleviate quat shortage w/OCSPP (Sven)
- Apr 20** – Notification on final withdrawal of EPA's human health WQSs for State of WA w/OW, R10 (Denis)
- Apr 20** – Notification on 10 year anniversary of Deepwater Horizon Oil Spill w/OW, R4, R6 (Denis)
- Apr 20** – Rep. Bilirakis (FL) request on PathOGen disinfectant w/OCSPP (Sven)
- Apr 20** – Rep. Marshall (KS) inquiry on Wichita company disinfectant product w/OCSPP (Sven)
- Apr 20** – Notification of postponement of TSCA SACC meeting on asbestos w/OCSPP (Sven)
- Apr 21** – Notification of final Navigable Waters Protection Rule FRN publication w/Army Corps (Denis)
- Apr 21** – Sen. Ernst (IA) staff briefing on dicamba and ESA w/OCSPP, R7, Iowa (Sven/LaTonya Sanders)
- Apr 21** – Sen. Cantwell (WA) question on Oxyl-Pro disinfectant w/OCSPP (Sven)
- Apr 22** – PFAS briefing for appropriators w/ OCFO, OW, ORD, OCSPP, OLEM (Matt)
- Apr 22** – Sen. Rounds (SD) inquiry re: PFAS in well water used for ag w/OW, ORD (Matt/Holt)
- Apr 22** – Rep. Steil (WI) request on DMR's NOVEX-AMG disinfectant w/OCSPP (Sven)
- Apr 22** – Rep. Arrington (TX) constituent disinfectant request w/OCSPP, R6 (Sven)
- Apr 22** – Rep. Norcross (NJ) question on Grignard disinfect w/OCSPP (Sven)
- Apr 23** – Notification on safe disinfectant use w/OCSPP (Sven)
- Apr 23** – Sen. Casey (PA) inquiry on mislabeled disinfectants w/OCSPP referred to OECA (Sven/Carolyn, Kyle Zieba)
- Apr 23** – Notification on actions against fraudulent disinfectants w/OCSPP, OECA (Sven)
- Apr 24** – HEC minority question on consumer disinfectant products letter w/OCSPP (Sven)
- Apr 24** – Notification on Carbaryl and Methomyl comment period extension w/OCSPP (Sven)
- Apr 30** – NIEHS/ICCVAM briefing including Sen. Shaheen (NH)/Rep. Calvert (CA) w/OCSPP (Sven)



**Apr TBD** – Hill notification on final lead-free pipes rule w/OW (Matt)  
**Apr TBD** – Notification on perchlorate litigation/policy actions w/OW (Matt)  
**Apr TBD** – Notifications on OW/OECA memo on water sector priorities & flexibilities during COVID-19 (TBD)  
**May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)  
**Pending** – MMSA briefing call request on Good Sam legislation including Sen. Gardner (CO) staff, EPA, NMA, Trout Unlimited w/OW, OLEM, R8 (Denis)  
**Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)  
**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Sen. Rick Scott (FL) inquiry on 3B Medical's Lumin disinfectant w/OCSP, R4 (Sven)  
**Pending** – Sen. Manchin (WV) inquiry on 4D Tech Solutions w/OCSP (Sven)  
**Pending** – Rep. McCarthy (CA) question about pesticide worker PPE availability w/OCSP (Sven)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSP (Sven)  
**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSP (Sven)  
**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSP (Sven)  
**Pending** – Senate Ag question on pesticides reregistration advisory statement w/OCSP (Sven)  
**Pending** – Rep. Amodei (NV) request on NMP risk evaluation w/OCSP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)  
**Pending** – HAC QFRs from March 4 budget hearing w/OW (Team)  
**Pending** – HEC QFRs from Feb 27 budget hearing w/OCSP, OW (Team)  
**Pending** – HTI QFRs from Sept 18 water policy hearing w/OW (Denis)  
**Pending** – SEPW QFRs from Oct 23 WRDA hearing w/OW (Team)

#### **HEARINGS/FORUMS:**

Topic:	[ <a href="https://www.epw.senate.gov/public/index.cfm/hearings?ID=509FF3A2-00BF-40C3-B410-ECFF10189AC5">HYPERLINK "https://www.epw.senate.gov/public/index.cfm/hearings?ID=509FF3A2-00BF-40C3-B410-ECFF10189AC5"</a> ]
Committee:	Senate Environment and Public Works
Date:	Wednesday, April 22
EPA Witness:	None
Contact:	Matt Klasen
Topic:	2021 Budget Hearing
Committee:	Senate Environment and Public Works
Date:	(Tent) May 20
EPA Witness:	Administrator Wheeler
Contact:	Team

#### **116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

**[ [HYPERLINK](https://www.congress.gov/bill/116th-)**  
**"https://www.congress.gov/bill/116th-**

[ PAGE \\* MERGEFORMAT ]



**congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%2216%7CS%7C2019-02-15%5C%22+AND+%28billIsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1" ]**/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed Mar 8, 2019 (Sven)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1689" ]**/PL 116-63 – Booker (NJ), SRF transfer bill, Signed Oct 3, 2019 (Elizabeth)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1790" ]**/PL 116-92 – Inhofe (OK), NDAA w/PFAS TSCA and TRI provisions, Signed Dec 20, 2019 (Matt)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/748" ]**/PL 116-136 – Courtney (CT), CARES Act, Phase 3 Covid-19 response w/\$1.5m for FIFRA pesticide disinfectants and \$1.5m for disinfectant research, Signed Mar 27, 2020 (Sven)

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/535" ]** – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-



free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/729/>" ]** – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/EPA participation, **Passed House Dec 10** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/925/>" ]** – Thompson (CA), see also S.3051, reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Passed House Nov 20, Amended and passed Senate Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331/>" ]** – Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162/>" ]** – Napolitano (CA), expands Bureau of Reclamation water recycling and reuse grant program, **House Natural Resources markup held Mar 11** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text/>" ]** – Bonamici (OR), bans asbestos and adds reporting requirements, same as S.717, **HEC hearing May 8, Passed HEC Nov 19** (Sven)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), establishes Puget Sound program office, Task Force, and Advisory Committee, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/3723>" ]**

– Levin (CA), amends DOI desalination project authorities, **Passed House Natural Resources Mar 11** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]**

– Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]**

– Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]**

– Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4891/text>" ]**

– Torres Small (NM), amends DOI and EPA water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Natural Resources hearing held Jan 28** (Matt),

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5279>" ]**

– Pallone (NJ), amends existing FDA authorization to review cosmetics, **Passed HEC health subcommittee Mar 11 w/Dingell amendment to prioritize cosmetics w/PFAS** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5347/>" ]**

– Cox (CA), creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Natural Resources hearing held Jan 28** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), requires notification of PFAS discharges to POTWs, **Incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment



Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, adds requirements for oil and gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil and gas operations, **Introduced Mar 5** (Matt)

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113>" ]**

– Katko (NY), ARPA-H2O Act, creates new EPA "Advanced Research Projects Agency-Water", EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6185>" ]**

– Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

## [ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6422>" ]**

– Davis (IL), National Infrastructure Bank Act of 2020, Creates a National Infrastructure Bank with a maximum of \$500b in assets for making infrastructure investments, including drinking water, wastewater, and stormwater projects, **Introduced Mar 31** (Matt)



[ HYPERLINK "https://debbiedingell.house.gov/news/documentsingle.aspx?DocumentID=2294" ] -- Tlaib (MI), Emergency Water is a Human Right Act, creates \$1.5b HHS grant program for providing assistance to low-income drinking water & wastewater customers, prohibits water shutoffs by grant recipients, **Introduced Apr 17** (Matt)

[ HYPERLINK

"https://www.congress.gov/bill/116th-congress/senate-bill/10" ]

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, **Passed Senate Commerce Nov 13** (Denis)

[ HYPERLINK

"https://www.congress.gov/bill/116th-congress/senate-bill/1087" ]

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, same as HR 2205, **SEPW hearing Nov 19** (Denis)

[ HYPERLINK

"https://www.congress.gov/bill/116th-congress/senate-bill/1982" ]

– Sullivan (AK), Save Our Seas 2.0 Act, **Passed Senate Jan 9** (Denis)

[ HYPERLINK

"https://www.congress.gov/bill/116th-congress/senate-bill/2353" ]

– Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB sent other agencies' views for our review Mar 23** (Matt)

[ HYPERLINK

"https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf" ]

– Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **Passed Senate Commerce Nov 13** (Matt)



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]** – Murkowski (AK), establishes energy-water nexus sustainability office managed by DOE and DOI, **Introduced Dec 17** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051/>" ]** – Barrasso (WY), reauthorizes Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Incorporated into H.R. 925, Passed Senate Jan 9** (Denis, Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3211/>" ]** – Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3480/>" ] – Shaheen (NH), PFAS Testing and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12; CBO inquiry Mar 19 re groundwater cleanup guidance** (Matt /Carolyn Levine)

[ HYPERLINK "<https://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=A972BA8E-0390-4246-B10A-324F3CE73C67>" ] – Barrasso (WY), America's Water Infrastructure Act of 2020 and Drinking Water Infrastructure Act of 2020, Bipartisan water infrastructure legislation, **Bill text released Apr 21 in advance of Apr 22 information-gathering process** (Matt)



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 3/17/2020 7:39:12 PM  
**To:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Jenkins, Brandi [Jenkins.Brandi@epa.gov]  
**Subject:** RE: Yazoo

Hey Tony – Sorry for the delay – this is first free moment to catch email. The Corps – and particularly MG Mark Toy – is coordinating this meeting with Sen. Hyde Smith's office. He has sent me the times and call in number, which I forwarded under separate email.

Thanks,  
Mary

---

**From:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?

Thanks,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Yazoo



If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Sent: Monday, March 16, 2020 6:00 PM

To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Cc: Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>

Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

**From:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Sent:** 5/21/2020 11:30:16 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

I'm ok with the edits on #3 & 4

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Thursday, May 21, 2020 2:33 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Greg, here are my reactions/edits. Let me know if you have any questions.

Thanks,

Anna

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**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Tuesday, May 19, 2020 4:50 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion, Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) but please review the other questions to see if you are ok with the interagency comments. In addition to Ex. 5 Deliberative Process (DP) the other big decision point is Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) See which questions are yours to review below.

1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.
2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits



5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 6/11/2020 8:37:55 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Yazoo Modeling Response  
**Attachments:** YBA Modeling Draft Comments (6.11.2020).docx

Lee and David,

Attached are the draft comments on the Yazoo modeling data. These are due to the Corps by tomorrow COB. Please take a look and let me know if you have concerns.

Thanks  
Mary

---

**From:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Sent:** Thursday, June 11, 2020 4:33 PM  
**To:** Banister, Beverly <Banister.Beverly@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Cc:** Ghosh, Mita <Ghosh.Mita@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Ainslie, William <Ainslie.William@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>  
**Subject:** YBA Modeling Response

Hi Everyone,

Attached is our response to the Yazoo Backwater Area Modeling request from the USACE. During the cooperating agency meeting, they informally requested our feedback on the models that will be used in the Supplemental EIS. Attached is our response to that question that we plan to email COB tomorrow. If you have any questions or comments, please free to reach out to us at any time.

Thanks,

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Jackson, Ryan [jackson.ryan@epa.gov]  
**Sent:** 2/11/2020 10:42:58 AM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]  
**Subject:** Fwd: Yazoo Briefing paper - for review.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF (002).docx; ATT00001.htm

When will EPA conclude our review?

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Ex. 6 Personal Privacy (PP)**

Begin forwarded message:

**From:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Date:** February 10, 2020 at 7:46:09 PM EST  
**To:** "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Fotouhi, David" <Fotouhi.David@epa.gov>, "Walker, Mary" <walker.mary@epa.gov>  
**Subject:** **Yazoo Briefing paper - for review.**

Ryan,

Here a briefing paper on where we stand on the Yazoo pump project for your review.

Let me know if you need anything else.

Respectfully,

Lee



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides, and Toxics Team**  
**Week of April 13, 2020**

**Congress recessed**

**NEW:**

- Rep. Tom Graves (GA) inquiry re: constituent drinking water w/R4 (Matt)
- SEPW followup question on Sec. 6 of draft WRDA w/OW (Matt)
- Sen. Portman(OH)/Rep. Johnson (OH) disinfectant emergency exemption request w/OCSPP (Sven)
- Sen. Johnson (WI)/Senate HSGAC inquiry on Betterair's EB-8 disinfectant w/OCSPP (Sven)
- Rep. Gosar (AZ) request on Purus Air disinfectant w/OCSPP (JohnMark Kolb, Sven)
- Sen. Lee (UT) request on TwinOxide disinfectant w/OCSPP (Sven)
- Sen. Rounds (SD) inquiry on soybean oil w/OCSPP, FDA (Sven)
- Rep. Amodei (NV) request on NMP risk evaluation w/OCSPP (Sven)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

- Apr 6** – TA to Senate EPW on Sections 1-7 of draft WRDA w/OW (Matt)
- Apr 6** – Sen. Menendez (NJ) request on GarmaGuard disinfectant w/OCSPP (Sven)
- Apr 6** – Rep. Joyce (OH) request on SNIper viral disinfectant approval w/OCSPP (Sven)
- Apr 6** – Rep. Gallagher (WI) request on Micron Pure ozone disinfectant w/OCSPP (Sven)
- Apr 6** – Sen. Cassidy (LA) Re: quarternary ammonium shortage for disinfectants w/OCSPP (Sven)
- Apr 6** – Sen. Loeffler (GA) inquiry on PreVasive disinfectant ingredient shortage w/OCSPP (Sven)
- Apr 6** – Sen. Risch (ID)/Rep. Fulcher (ID) request on Scentsy disinfectant w/OCSPP (Sven)
- Apr 6** – Rep. Calvert (CA) request on Pura Naturals disinfectant request w/OCSPP (Sven)
- Apr 6** – Notification of draft scope documents for next high-priority chemicals w/OCSPP (Sven)
- Apr 7** – Rep. Gallagher (WI) question on Steri-7 disinfectant w/OCSPP (Sven)
- Apr 7** – Rep. Carbajal (CA) request on Shield Sanitizer disinfectant w/OCSPP, R9 (Sonam Gill, Sven)
- Apr 7** – Sen. Harris (CA) inquiry on state disinfectant registrations w/OCSPP (Sven)
- Apr 7** – Sen. Lee (UT) inquiry on Act Global disinfectant w/OCSPP (Holt Edwards, Sven)
- Apr 7** – Announcement on maintaining WaterSense program specifications w/OW (Denis)
- Apr 8** – Sen. Kaine (VA) request on PurAyr device determination w/OCSPP (Sven)
- Apr 8** – Rep. Emmer (MN) question on Ver-tec and state programs w/OCSPP (Sven)
- Apr 8** – HEC minority inquiry on FIFRA registration improvements w/OCSPP (Sven)
- Apr 9** – TA to Senate EPW on Sections 8-14 of draft WRDA w/OW (Matt)
- Apr 9** – Announcement on allocation for increased FY20 GLRI funding of \$20 million w/OW, R5 (Denis)
- Apr 9** – Notification on update to [ [HYPERLINK "https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2"](https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2) ] of EPA approved disinfectants w/OCSPP (Sven)
- Apr 14 (tent.)** – House & Senate approps briefing on PFAS w/ OCFO, OW, ORD, OCSPP, OLEM (Matt)
- Apr 30** – NIEHS/ICCVAM briefing including Sen. Shaheen (NH)/Rep. Calvert (CA) w/OCSPP (Sven)
- May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)
- Pending** – MMSA briefing call request on Good Sam legislation including Sen. Gardner (CO) staff, EPA, NMA, Trout Unlimited w/OW, OLEM, R8 (Denis)
- Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)
- Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)



**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Sen. Hyde-Smith (MS) inquiry re: Pearl, MS grant status w/R4 (Denis, Davina)  
**Pending** – Sen. Portman (OH) inquiry on behalf of Gilla company disinfectant w/OCSP (Sven)  
**Pending** – Rep. Reed (NY) request on Indoor Air Professionals' Kanberra disinfectant w/OCSP (Sven)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSP (Sven)  
**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSP (Sven)  
**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSP (Sven)  
**Pending** – Senate Ag question on pesticides reregistration advisory statement w/OCSP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – SEPW TA request on clean water provisions of draft WRDA w/OW (Matt)  
**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)  
**Pending** – HAC budget hearing QFRs w/OW, OCSP (Team)  
**Pending** – HEC budget hearing QFRs – draft responses due Apr 16 w/OCSP, OW (Team)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Denis)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Matt)

**HEARINGS/FORUMS:** None

**116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1"** ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed Mar 8, 2019 (Sven)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-**



**congress/senate-bill/1689" ]/PL 116-63 – Booker (NJ), SRF transfer bill, Signed Oct 3, 2019 (Elizabeth)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1790" ]/PL 116-92 – Inhofe (OK), NDAA w/PFAS TSCA and TRI provisions, Signed Dec 20, 2019 (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/748" ]/PL 116-136 – Courtney (CT), CARES Act, Phase 3 Covid-19 response w/\$1.5m for FIFRA pesticide disinfectants and \$1.5m for disinfectant research, Signed Mar 27, 2020 (Sven)**

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/535" ] – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/729/" ] – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/EPA participation, **Passed House Dec 10** (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/925/" ] – Thompson (CA), see also S.3051, reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Passed House Nov 20, Amended and passed Senate Jan 9** (Denis, Sven)**



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1331>" ]**

– Speier (CA), San Francisco Bay Restoration Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162>" ]**

– Napolitano (CA), expands Bureau of Reclamation water recycling and reuse grant program, **House Natural Resources markup held Mar 11** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), bans asbestos and adds reporting requirements, same as S.717, **HEC hearing May 8, Passed HEC Nov 19** (Sven)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), establishes Puget Sound program office, Task Force, and Advisory Committee, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/3723>" ]**

– Levin (CA), amends DOI desalination project authorities, **Passed House Natural Resources Mar 11** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4031>" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4044>" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4891/text>" ]** – Torres Small (NM), amends DOI and EPA water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Natural Resources hearing held Jan 28 (Matt)**,

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5279>" ]** – Pallone (NJ), amends existing FDA authorization to review cosmetics, **Passed HEC health subcommittee Mar 11 w/Dingell amendment to prioritize cosmetics w/PFAS (Matt)**

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5347/>" ]** – Cox (CA), creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Natural Resources hearing held Jan 28 (Matt)**



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), requires notification of PFAS discharges to POTWs, **Incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, adds requirements for oil and gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil and gas operations, **Introduced Mar 5** (Matt)

[ **HYPERLINK**

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/house-bill/6113" ]** – Katko (NY), ARPA-H2O Act, creates new EPA “Advanced Research Projects Agency-Water”, EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/6185" ]** – Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/10" ]** – Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, **Passed Senate Commerce Nov 13** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1087" ]** – Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, same as HR 2205, **SEPW hearing Nov 19** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1982" ]** – Sullivan (AK), Save Our Seas 2.0 Act, **Passed Senate Jan 9** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2353" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB sent other agencies’ views for our review Mar 23** (Matt)



[ **HYPERLINK**

**"<https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf>" ]** – Shaheen

(NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **Passed Senate Commerce Nov 13** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]** – Murkowski (AK), establishes energy-

water nexus sustainability office managed by DOE and DOI, **Introduced Dec 17** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051/>" ]** – Barrasso (WY), reauthorizes Chesapeake

Bay program, exempts fishing tackle from TSCA, and creates FWS fish habitat program w/EPA role, **Incorporated into H.R. 925, Passed Senate Jan 9** (Denis, Sven)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3211/>" ]** – Rubio (FL), Clean Water Allotment

Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ **HYPERLINK** "<https://www.congress.gov/bill/116th-congress/senate-bill/3480/>" ] – Shaheen (NH), PFAS Testing and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12; CBO inquiry Mar 19 re groundwater cleanup guidance** (Matt /Carolyn Levine)



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 2/3/2020 10:11:51 PM  
**To:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Tovar, Katlyn [tovar.katlyn@epa.gov]  
**CC:** Kramer, Jessica L. [kramer.jessical@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Attachments:** Region 4 Hot Topics-gs\_LD OST.docx

OST

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**From:** Weyer, Erica <weyer.eric@epa.gov>  
**Sent:** Monday, February 03, 2020 10:47 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Subject:** RE: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events

Greg,

Apologies this is late. Not sure if it's still of use, but forwarding our edits to R4.

Thanks,  
Erica

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Thursday, January 30, 2020 9:55 AM  
**To:** Santell, Stephanie <Santell.Stephanie@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Sylvester, Francis <Sylvester.Francis@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Risley, David <Risley.David@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Vazquez, Sharon <Vazquez.Sharon@epa.gov>  
**Subject:** DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Special assistants,

Thank you for completing the recent drill where your office developed inserts per state on hot topics in order to prepare the Administrator for several upcoming events with Governors.

OW now has the opportunity to review the inserts submitted by the Regions. What we are looking for is for your SMEs to be a second set of eyes on these bullets to ensure they are accurate and consistent with the messaging HQ has used. I put an \* next to the hot topics I think need an extra look. Topics without an \* are ones I read and, according to my judgment, seemed accurate and consistent with messaging.

The window for your review is now until noon tomorrow. Please make edits to the word documents. Thanks for reviewing! OW IO will need Monday to review what you all submit. Our feedback is due to OCIR on 2/3.

Please reply to me to confirm receipt of this email.

Joe and Erica W - I plan to make the overall comment that whenever PFAS is mentioned, the Region should be specific about which type of PFAS. They should say PFOA or PFOS and not use the general term PFAS when the specific analyte is known.



Here is a table of contents showing the water hot topics identified.

- Region 1
  - Great Bay Draft Permit
  - MS4 settlement
- Region 4
  - Lake Okeechobee\*
  - HABs\*
  - Yazoo
  - Wet Mine Assets Holding, LLC Clean Water Act Section 404 Enforcement Matter\*
- Region 5
  - Michigan Lead and Copper Rule (LCR)
  - MI Action on PFAS
  - Flint Drinking Water
  - Indiana WIFIA loan
  - OH Action on PFAS
  - OH HABs
  - OH Lead and Copper Rule (LCR)
  - Gov. Mike DeWine and WOTUS
- Region 6 – nothing – they only provided air issues
- Region 8
  - CO - CO WQS for PFAS, 401, Denver water variance\*
  - ND – water transfer project that has an NPDES component\*, WIFIA loan - Fargo
  - SD – PFOA at Ellsworth AFB, UIC permits and aquifer exemptions
  - UT - WIFA loan for Salt Lake City, state developed nutrient criteria
  - WY - UIC Class VI, CO2 sequestration, Barrasso letter on NARs duplication with 305(b)
- Region 9
  - American Samoa - Skarkist NPDES-related consent decree, water infrastructure funding
  - AZ- Mex Border funding
  - Northern Mariana Islands - Typhoon Yutu Recovery Efforts, water infrastructure funding, PFOA levels in DW above HA\*
  - Guam – water and wastewater enforcement, Stormwater permits, PFAS-contaminated drinking water wells,\* water infrastructure funding.
  - HI – contamination of a drinking water aquifer
  - NV - Henderson Perchlorate Cleanup, funding to support tribal water work
- Region 10
  - ID – ID becoming authorized to issue NPDES permits, Water quality standards\*, Columbia River Basin Restoration Program, 401, small system compliance metric
  - OR – Col. River TMDL (summary looks accurate), Klamath TMDL\*, Willamette TMDL, reviewing the state run NPDES program, Columbia River Basin Restoration Program, OR 2012 impaired waters list, Liquified Natural Gas Pipeline Project, 401, small system compliance metric, 404 assumption.
  - WA – Human Health WQC, 401, PFAS at Whidbey Island, Col. River TMDL (summary looks accurate), Columbia River Basin Restoration Program, Puget sound NEP, Puget sound no discharge zone, 401, small system compliance metric
  - AK – to be handled by OW IO

---

**From:** Carter, Brittany S. <[carter.brittanys@epa.gov](mailto:carter.brittanys@epa.gov)>

**Sent:** Wednesday, January 29, 2020 12:42 PM

**To:** Hoverman, Taylor <[hoverman.taylor@epa.gov](mailto:hoverman.taylor@epa.gov)>; Bolen, Derrick <[bolen.derrick@epa.gov](mailto:bolen.derrick@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>; Cory, Preston <[Cory.Preston@epa.gov](mailto:Cory.Preston@epa.gov)>; Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; Emmerson, Caroline <[Emmerson.Caroline@epa.gov](mailto:Emmerson.Caroline@epa.gov)>; Ingram, Amir <[Ingram.Amir@epa.gov](mailto:Ingram.Amir@epa.gov)>; Willey, Katharine <[willey.katharine@epa.gov](mailto:willey.katharine@epa.gov)>



**Cc:** Pic, Jordan <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Attached are the hot topics we received from the regions. (For those paying close attention, R7 said they did not have any work worth flagging for KS & NE.)

If you could please take a look and send back edits by **COB this Friday, 1/31** (at the latest 9am Monday, 2/3) we'd appreciate it. **Please track your edits** (this will help with version control and making sure all edits make the cut).

Please let us know if you have any questions.

Thanks again!

Best regards,

-Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 3:12 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>

**Cc:** Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi everyone,

Sent the below email out to the regions today. Wanted to flag for your offices too. Summary of the below email: The Western Governors' Association is hosting breakfast meeting with cabinet officials & governors on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues or updated briefing papers that apply to these states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). One pagers are okay for the larger issues (I'll include them as attachments to the briefing.)

Know the is twofold for you—once I have the updated information from the regions I will send to you as well to avoid any discrepancies.

Thank you and please let me know if you have any questions or suggestions.

Best regards,

Britt

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**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 1:09 PM

**To:** Regional Public Affairs Directors <Regional\_Public\_Affairs\_Directors@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>

**Cc:** Bowles, Jack <Bowles.Jack@epa.gov>; Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>; Richardson, RobinH



<Richardson.RobinH@epa.gov>

**Subject:** Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Happy New Year!

The Western Governors' Association is hosting breakfast meeting with cabinet officials on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues for your states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). (As you can see some issues were much longer than requested—please use your best judgement.) Thanks in advance. (Later on 02/09, there is a dinner with all governors—there is potential for more states—will circle back but can start here for now.)

**The WGA states:**

Region 6: TX, OK, NM

Region 7: NE, KS

Region 8: ND, SD, MT, WY, UT, CO

Region 9: CA, NV, AZ, HI, Guam, AS, NMI

Region 10: WA, OR, ID, AK

**Dinner:**

Region 1: NH

Region 4: FL, MS, GA

Region 5: OH, IN, MI

Please let me know if you have any questions. Thank you!

Best regards,

Britt

Britt Carter

Director of Intergovernmental Relations

U.S. Environmental Protection Agency



Message

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**From:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Sent:** 3/17/2020 2:36:12 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: Yazoo

Hey Mary – I'm trying to get up to speed on this request, I haven't been looped in except for hearing about it third hand yesterday. Has anything been scheduled? If so, who all has been in communication so that I can arrange for a call rather than an in person meeting?

Thanks,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, March 16, 2020 7:44 PM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, March 16, 2020 6:00 PM  
**To:** Ross, David P <ross.davidp@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone



On Mar 16, 2020, at 5:41 PM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



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## LEAD IN DRINKING WATER

### **BACKGROUND:**

- Due to the implementation of the Lead and Copper Rule (LCR), first promulgated in 1991, the levels of lead in drinking water have decreased significantly. However, there are still significant challenges with implementation of the current regulation and there are additional opportunities to improve public health protection.
- Lead enters drinking water mainly from corrosion of plumbing materials containing lead. Where present, lead service lines are the most significant source of lead in drinking water. EPA estimates there are between 6.5 and 10 million lead service lines in the U.S.
- The LCR is a complicated drinking water regulation to implement because the primary source of the contaminant is corrosion of lead or copper in the service lines and premise plumbing after drinking water leaves the treatment plant. The LCR requires water systems to conduct tap sampling in homes to assure compliance.
- One effective means of reducing lead exposure is to optimize corrosion control treatment to avoid or limit leaching of lead into drinking water.
- Many drinking water systems have not fully optimized corrosion control treatment, and the LCR does not require small or medium-sized systems to implement corrosion control unless more than 10% of samples exceed EPA's action level of 15 parts per billion.
- In most communities, lead service lines are partially or entirely privately owned, and some homeowners or renters may be unwilling or unable to replace the portion of the line at their home.

### **KEY POINTS:**

- EPA published a proposed rulemaking on November 13, 2019 that significantly improves the actions water systems must take to reduce lead in the nation's drinking water. This proposed rule represents the first major overhaul of the Lead and Copper Rule since 1991.
- The proposed rule will improve the protection of children in schools and child care facilities by requiring water systems to take drinking water samples from the schools and child care facilities served by the system. Exposure to lead is known to present serious health risks to the brain and nervous system of children. Critics of the rule believe that EPA's changes to the requirements for lead service line replacement (LSLR) are less protective. However, the current LCR has multiple weaknesses:
  - No LSLR plan is required. Systems are only required to implement an LSLR program when the lead action level of 15 ppb is exceeded.
  - Systems can count partial replacements and LSLs that have been tested out (i.e., samples from the LSL do not exceed 15ppb) as "replaced" to meet the 7% mandatory annual replacement rate.
  - Water systems are not required to replace their portion of an LSL when the customer-owned portion of the line is being replaced.
- The EPA is fixing these weaknesses by;
  - Proposing to require systems that are above 10 ppb, but at or below 15 ppb, to work with their state to set an annual goal for replacement. Systems that are above 15 ppb will be required to replace a minimum of 3% of the number of LSLs annually.
  - Proposing to require full lead service line replacements (not partial).



- Proposing to not allow systems to avoid LSLR by “testing out” via sampling.
  - Proposing to require water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their customer-owned portion of the line.
- The FY 2021 President’s Budget request includes \$863.2 million for the Drinking Water State Revolving Fund, allowing states to finance high priority infrastructure investments, including the replacement of lead service lines to protect human health. In addition, the FY 2021 request includes \$20 million for Reducing Lead in Drinking Water grants, \$15 million for Lead Testing in Schools grants as well as \$10 million for Lead in Drinking Water Fountain Replacement grants, and \$2 million for Drinking Water Resilience and Sustainability grants.
- The WIFIA program can provide financing for infrastructure projects that reduce exposure to lead. The FY 2021 President’s Budget requests \$25 million for the WIFIA program. Congress appropriated \$60 million for FY 2020.
- To date, EPA has selected 23 projects to apply for WIFIA loans that have either a lead reduction or emerging contaminant component.

### **TALKING POINTS:**

- Implementation of the LCR over the past twenty-five years has resulted in major improvements in public health; the number of the nation’s large drinking water systems that have exceeded the LCR action level of 15 parts per billion has decreased by over 90 percent since the initial implementation of the rule.
- Based on recent EPA data, over 95 percent of the systems have not reported an action level exceedance in the last three years.
- EPA’s proposed Lead and Copper Rule revisions include a suite of actions to reduce lead exposure in drinking water where it is needed the most. The proposed rule will identify the most at-risk communities and ensure systems have plans in place to rapidly respond with actions to reduce elevated levels of lead in drinking water.
- The proposal focuses on six key areas:
  - identifying areas most impacted;
  - strengthening treatment requirements;
  - replacing lead service lines;
  - increasing sampling reliability;
  - improving risk communication by notifying consumers with a LSL or a service line of unknown material annually and providing options for mitigating risk, including removing the LSL; and
  - protecting children in schools.
- EPA’s proposal will result in a 3-to 30-fold increase in lead service line replacement by closing loopholes in the existing regulation.
  - The current rule’s 7% replacement rate (which allows partial replacements and test outs) is rarely occurring in practice so a change is required if we want to accelerate LSL replacement.
  - Key improvements under the proposed rule include requiring LSL removal sooner, more stringent sampling to identify high lead levels sooner, ensuring full LSL replacements versus partial replacements, and preventing systems from avoiding removal through testing out of lines. Additionally, for the first-time communities will know where LSLs are located.



- The proposal's wide array of interrelated actions will increase the current rate of lead service line replacements and better protect America's families and children.
- EPA extended the comment period for the proposal by 30 days from an end date of January 13, 2020, to February 12, 2020. EPA received over 78,000 comments on the proposal. The agency is carefully evaluating these to inform final action.
- EPA will publish a final rule this summer.

### **Responses to Recent Congressional Criticism**

EPA has received several letters concerning its proposed revision of the lead and copper rule including a 50-member Congressional letter received on February 18, 2020. Below are the assertions in the 50-member letter and talking points to respond.

**Letter Comment 1.** "Scientists including EPA's Science Advisory Board, have found that partial lead service line (LSL) replacement does not reduce the risk of lead exposure and can actually make it worse".

#### **EPA Response 1 - partial lead service line (LSL) replacement.**

- We agree. In the Lead and Copper Rule Revisions (LCRR), EPA considered the SAB's recommendations and proposed requirements for full lead service line replacements.
- EPA's proposal will result in a 3-to 30-fold increase in lead service line replacement by closing loopholes in the existing regulation.
  - The current rule's 7% replacement rate (which allows partial replacements and test outs) is rarely occurring in practice so a change is required if we want to accelerate LSL replacement.
  - Key improvements under the proposed rule include requiring LSL removal sooner, more stringent sampling to identify high lead levels sooner, ensuring full LSL replacements versus partial replacements, and preventing systems from avoiding removal through testing out of lines. Additionally, communities will know generally where LSLs are located.
  - The proposal's wide array of interrelated actions will increase the current rate of lead service line replacements and better protect America's families and children.

**Letter Comment 2.** "There should also be a clear and rational deadline for all water systems to complete this important task."

#### **EPA Response 2 - lead service line (LSL) replacement deadline.**

- We agree that full LSL replacement is important to reducing sources of lead in drinking water. However, setting a deadline for all PWSs would be prohibitive as the estimated cost to replace all LSLs in the \$billions and would require significant new investments from Congress. We are happy to work with you to determine the best path forward.
- Absent new sources of funding, many communities would not be able to afford the costs of replacing all lead service lines at an accelerated rate. The proposed revisions mandate lead service line replacements in those communities with the highest drinking water lead levels and compel water systems in other communities to take proactive, tailored actions to plan upgrades to aging infrastructure that replace lead service lines.



- The totality of actions provided in this proposal will help manage lead exposure while communities work to balance their needs and work towards removing lead service lines. Under the proposed LCRR, LSL replacements will increase.

**Letter Comment 3.** “We strongly recommend that the final rule include the proposed annual notification to consumers if they have service lines of lead or unknown materials that consumers, especially renters, be notified to help ensure that they are made aware of the risk from lead contamination.”

**EPA Response 3 - lead service line (LSL) public notification.**

- EPA agrees, the proposed LCRR would require systems to notify consumers with an LSL or a service line of unknown material annually and options for mitigating risk, including removing the LSL. Information regarding the existence of an LSL will provide important information for renters on potential lead exposure in their home and could prompt a communication with their landlord regarding lead service line replacement.
- The proposed LCRR also would require systems to notify their consumers within 24 hours of receipt of results showing an action level exceedance and to provide information about lead sampling results and LSLs in their Annual Water Quality Reports.

**Letter Comment 4.** “we recommend simplifying the proposed two-tier system with a "trigger level" of 10 parts per billion (ppb) lead and an "action level" of 15 ppb by reviewing whether to simply reduce the action level.”

**EPA Response 4 - "trigger level" of 10 parts per billion (ppb) lead and an "action level" of 15 ppb.**

- The action level is not a standard for establishing a safe level of lead in a home or the water system. EPA maintains that there is no safe level of lead in drinking water.
- EPA’s lead action level is a measure of the effectiveness of the corrosion control treatment in water systems.
- EPA proposed a trigger level as a new lower threshold to compel water systems to take actions to reduce lead levels at the tap sooner.
- This new trigger level will result in more water systems undertaking lead service line replacement programs, reoptimizing corrosion control, or being prepared to implement corrosion control.
- The concept of a trigger level was recommended to EPA by State co-regulators and the EPA believes this is a reasonable threshold at which to compel additional actions by water systems to reduce lead exposure.
- It is important to remember that the trigger level is just one of a number of proposed improvements that will target actions that are critical to reducing lead exposure.



## **“WATERS OF THE UNITED STATES” RULEMAKINGS**

### **BACKGROUND:**

- The EPA and Department of the Army promulgated a rule in June 2015 defining “waters of the United States” (the 2015 Rule) and the jurisdictional scope of the Clean Water Act (CWA).
- The 2015 Rule has been mired in litigation since it was signed more than four years ago and has never been in effect nationwide.
- The agencies have pursued a two-step approach to implementing the President’s February 2017 Executive Order regarding “waters of the U.S.”:
  - Step 1: Repeal the 2015 Rule and re-codify the prior regulations.
    - The agencies announced the final Step 1 rule on September 12, 2019, and it became effective on December 23, 2019.
  - Step 2: Revise the definition of “waters of the U.S.”
    - On December 11, 2018, the EPA and the Army signed a proposed rule to revise the definition of “waters of the U.S.” consistent with the text of the CWA, Supreme Court precedent, and the President’s Executive Order.
    - The agencies signed the final Navigable Waters Protection Rule on January 23, 2020. The final rule was published in the Federal Register on April 21, 2020, and will become effective on June 22, 2020.

### **KEY POINTS:**

- The agencies conducted extensive outreach to states, tribes, local governments, small entities, the regulated community, and other stakeholders to hear their perspectives and recommendations.
- The agencies received approximately 620,000 comments during the public comment period for the Step 2 rule and carefully considered them before taking final action.
- The final Navigable Waters Protection Rule identifies four clear categories of waters that are federally regulated:
  - the territorial seas and traditional navigable waters;
  - perennial and intermittent tributaries to those waters;
  - certain lakes, ponds, and impoundments; and
  - wetlands adjacent to jurisdictional waters.
- The final rule also details what are not “waters of the United States,” which include:
  - ephemeral features that only contain water in direct response to rainfall;
  - groundwater;
  - many ditches, including most roadside and farm ditches;
  - farm and stock watering ponds;
  - waste treatment systems; and
  - prior converted cropland.



## **TALKING POINTS:**

- The Navigable Waters Protection Rule protects the nation’s navigable waters while rebalancing the relationship between the federal government and the states in managing land and water resources.
- Together with existing state and tribal regulations and local government programs, the final rule provides a network of coverage for our nation’s water resources in accordance with the Clean Water Act.
- The Navigable Waters Protection Rule respects the limited powers the executive branch has been given under the Constitution and the Clean Water Act to regulate navigable waters.
- Congress directed the agencies under the Clean Water Act to protect “navigable waters.” The Navigable Waters Protection Rule does that by covering these waters and the core tributary systems that provide perennial or intermittent flow into them.
- It also provides certainty and predictability that will save Americans time and money while accelerating infrastructure projects and economic development.
- Over the past five decades there have been multiple definitions and interpretations, and constant litigation surrounding the definition of “waters of the United States.”
- This rule puts an end to federal overreach and brings certainty to American farmers, landowners, and businesses that should significantly curtail the need to hire teams of attorneys to tell them how to use their own land.
- Thanks to the new rule, our nation’s farmers, ranchers, developers, manufacturers, and other landowners can refocus on providing the food, shelter and other commodities that Americans rely on every day.

## **Mapping/Data**

- Some will say that the Navigable Waters Protection Rule leaves thousands of miles of streams and millions of acres of wetlands unprotected—these assertions are speculative and full of inaccuracies.
- As a threshold matter, the Clean Water Act has never regulated all waters within the United States. The Obama Administration’s 2015 Rule essentially tried to do that and has been soundly rejected by the courts. Thus, allegations that the Navigable Waters Protection Rule eliminates jurisdiction over the majority of the Nation’s waters is false and misleading.
- Despite prior reports, there are no data or tools that can accurately map or quantify the scope of “waters of the United States” for the agencies’ regulatory purposes, or for comparing the illegal 2015 Rule with our new rule.
  - For example, the Navigable Waters Protection Rule covers tributaries with intermittent flow and excludes other features with only ephemeral flow, but the National Hydrography Dataset (NHD)—even at high resolution—cannot differentiate between intermittent or ephemeral flow in most parts of the country.
  - The NHD has other limitations and so does the National Wetlands Inventory (NWI):
    - errors of omission (*e.g.*, failure to map streams and wetlands that exist on the ground),
    - errors of commission (*e.g.*, mapping streams and wetlands that do not exist on the ground),
    - NHD is known to misclassify stream flow permanence, particularly in headwaters, and



- NWI uses a different definition of “wetlands” than the agencies’ regulatory definition of “wetlands.”
- The inability to quantify the scope of jurisdictional waters using existing maps is not unique to the Trump Administration or the Navigable Waters Protection Rule; indeed, the Obama Administration said that the NHD and NWI maps “cannot be used to determine Clean Water Act jurisdiction – now or ever.”
- And in 2015, former EPA Administrator McCarthy testified before Congress about the NHD and the NWI—the very same datasets some have used to inaccurately estimate changes in jurisdiction under the Navigable Waters Protection Rule. According to Administrator McCarthy’s testimony, those datasets:
  - were “not used to determine jurisdiction and not intended to be used for jurisdiction;”
  - “are not relevant to the jurisdiction of the ‘waters of the U.S.;”
  - “are not consistent with how we look at the jurisdiction of the Clean Water Act;” and
  - have “nothing to do, as far as I know, with any decision concerning jurisdiction of the Clean Water Act.”
- While the Trump Administration agrees the current data and tools are insufficient, we are committed to supporting the innovations needed to map the nation’s waters. The nation’s citizens deserve that transparency.

## **Flow Definitions**

- Under the Navigable Waters Protection Rule, a tributary must be perennial or intermittent in a typical year to be jurisdictional.
- Ephemeral features are categorically excluded under the final rule.
- Though “perennial,” “intermittent,” and “ephemeral” are commonly used scientific terms, the agencies included definitions of these terms in the final rule to ensure that the regulation is clear.
  - “Perennial” means surface water flowing continuously year-round (i.e., flows all the time).
  - “Intermittent” means surface water flowing continuously during certain times of the year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or when snowpack melts).
    - The phrase “certain times of the year” is intended to include extended periods of predictable, continuous surface flow occurring in the same geographic feature year after year.
    - Continuous surface water flow during certain times of the year may occur seasonally such as in the spring when evapotranspiration is low and the groundwater table is elevated. Under these conditions, the groundwater table intersects the channel bed and groundwater provides continuous baseflow for weeks or months at a time even when it is not raining or has not very recently rained. Intermittent flow may also be the result of melting snowpack.
  - “Ephemeral” means surface water flowing or pooling only in direct response to precipitation, such as rain or snow fall (i.e., only flows when it rains).



## EFFLUENT LIMITATION GUIDELINES

### **BACKGROUND:**

Effluent Limitation Guidelines (ELGs) are national, technology based, regulatory standards for industrial wastewater discharges.

- To date EPA has issued ELGs for 59 industrial categories.
- Clean Water Act section 304(m) requires EPA to biennially publish a plan identifying industries selected for regulatory revisions and any new industries identified for regulation.

On October 24, 2019, EPA published Preliminary 304(m) ELG Program Plan number 14, providing updates on ongoing analyses, industrial studies, and rulemakings.

### **KEY POINTS:**

The Preliminary ELG Plan did not identify any industrial categories that warranted new or revised ELGs but it does provide the public with a status update on a number of ongoing activities including:

- Revisions to the existing Steam Electric Power Generating Effluent Guidelines: EPA issued a proposed ELG for this industry on November 22, 2019, and received public comments until January 21, 2020; EPA is currently scheduled to finalize the rule in August 2020.
- The ongoing Electrical and Electronic Components Category Detailed Study: currently collecting wastewater discharge data associated with the manufacturing of a number of electronic components, including semiconductors.
- The Oil and Gas Extraction Wastewater Management Study: EPA released the draft report for public input on May 15, 2019; the final report is currently scheduled for release in 2020.
- Meat and Poultry Processing industrial category: the Preliminary ELG Plan identifies this category as a significant point source of nutrient discharges. OW/OST is coordinating with the AO and has begun reaching out to key animal agriculture stakeholders to collaborate in identifying and filling data gaps as we continue to study this industry.
- Petroleum Refining industrial category study: the Preliminary ELG Plan describes that EPA has concluded this study, but will continue to collaborate with the industry on future data assessments and methodologies as they become available.

The Preliminary ELG Plan also presents new tools and analysis for the public to comment on including:

- A preliminary review of nutrient discharges across all 59 industrial categories with existing ELGs.
- An analysis of available data on industrial sources and wastewater discharges of per- and polyfluoroalkyl substances (PFAS) that may warrant further study.
- An economic screening analysis enabling EPA to further prioritize industrial categories based on economic factors.



The Preliminary ELG Plan also introduced the PFAS Multi-Industry Study, which is designed to identify PFAS discharges in industrial wastewater.

- This study was initially announced in EPA's PFAS Action Plan and is focused on collecting data on the use, treatment and discharges of PFAS from several target industries: organic chemical manufacturers, airports, pulp & paper manufacturers, and textile & carpet manufactures.

**TALKING POINTS:**

- EPA is reviewing and incorporating the comments received on the Preliminary ELG Plan and plans to complete and issue the revised plan in 2020.
- As part of its work under CWA 304(m), EPA will continue to annually review existing ELGs for potential revision.



## PFAS DRINKING WATER REGULATORY DETERMINATION

### **BACKGROUND:**

- Every five years, EPA must publish a list of contaminants, known as the Contaminant Candidate List or CCL, that are known or anticipated to occur in public water systems and are not currently subject to EPA drinking water regulations. EPA publishes draft CCLs for public comment prior to issuing final lists.
- After issuing the final CCL, EPA determines whether or not to regulate five or more contaminants on the CCL through a process known as a Regulatory Determination. That process involves determining: (1) whether a contaminant may have adverse health effects; (2) whether a contaminant is found or substantially likely to be found in public water systems with a frequency and at levels of concern; and (3) whether, in the sole judgment of the Administrator, there is a meaningful opportunity for health risk reduction through a national drinking water regulation.
- EPA publishes preliminary regulatory determinations for public comment and considers those comments prior to making a final regulatory determination. If EPA makes a positive regulatory determination for any contaminant, it will begin the process to establish a national primary drinking water regulation, which typically includes a Maximum Contaminant Level (MCL).
- In 2016, EPA issued Health Advisories for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in drinking water. Health advisories are developed to provide information on contaminants that can cause human health effects and are known or anticipated to occur in drinking water. To provide Americans, including the most sensitive populations, with a margin of protection from a life-time exposure to PFOA and PFOS from drinking water, EPA established the health advisory levels at 70 parts per trillion. The health advisories are not regulations, but are designed to give state, local, and tribal governments the information they need to better protect human health.
- Additionally, under the third Unregulated Contaminant Monitoring Rule (UCMR3) program, EPA collected data for six PFAS. From January 2013 through December 2015, samples were collected nationally by all public water systems (PWSs) serving more than 10,000 people, as well as from 800 representative PWSs serving 10,000 or fewer people.
- EPA's PFAS Action Plan commits the agency to take important steps that will enhance how the agency researches, monitors, detects, and addresses PFAS.
- EPA continues to work on developing new reliable methods to detect and remove PFAS in drinking water. On December 19, 2019, EPA announced a new method (Method 533) capable of detecting an additional 11 PFAS chemicals. To date, EPA has developed methods to reliably detect for 29 PFAS chemicals in drinking water. Information on EPA's validated methods is publicly available.
- On February 20, 2020, EPA announced proposed regulatory determinations under the SDWA for eight contaminants listed on the fourth Contaminant Candidate List. On April 24, 2020, the EPA published a statement on the Agency's website that the comment period was extended, and the Agency is taking comment until June 10, 2020.
- The Agency is proposing to regulate two contaminants, PFOA and PFOS. EPA is also asking for information and data on other PFAS substances, as well as seeking comment on potential monitoring requirements and regulatory approaches EPA is considering for PFAS chemicals.



- The Agency is proposing to not regulate six contaminants: 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX.
- The EPA also presented an update and information on 1,4-dioxane and 1,2,3-trichloropropane and strontium in the notice, but the Agency is not making determinations for these contaminants.
- Once EPA makes a final positive regulatory determination for any contaminant, it will begin the process to establish a national primary drinking water regulation, which typically includes a Maximum Contaminant Level (MCL).
- As a part of the SDWA regulatory process, EPA is required to develop a health-based goal (Maximum Contaminant Level Goal) and a standard (MCL or treatment technique), identify treatment technologies, outline monitoring and reporting requirements, and conduct multiple technical analyses. EPA also engages with states, local officials, the Science Advisory Board, the National Drinking Water Advisory Council, and the public to obtain their input and assure that any regulatory requirements can be effectively implemented.
- The SDWA regulatory process is designed to ensure public participation, transparency, and the use of the best-available peer reviewed science and other technical information.

#### **KEY POINTS:**

- While the Agency is prioritizing actions to address PFAS in both a short-term and long-term timeframe, it is also necessary to ensure EPA's regulatory decisions will be defensible. The Agency must follow the processes established by SDWA and other applicable laws, like the Administrative Procedure Act. The regulatory process established by Congress in the SDWA is designed to ensure public participation, transparency, and the use of the best-available peer reviewed science and other technical information. By adhering to the processes created by Congress in the law, EPA will build a defensible record to defend the Agency's decisions if challenged in court. Failure to do so could impact the effectiveness of the regulation and the ability of the Agency to protect human health and the environment.

#### **TALKING POINTS:**

- Protecting America's drinking water and aggressively addressing PFAS will continue to be an EPA priority in 2020.
- On February 20, 2020, the EPA took another important step in implementing the Agency's PFAS Action Plan by proposing regulatory determinations for PFOA and PFOS in drinking water. In response to stakeholder requests, the EPA has extended the comment period an additional 30 days from May 11, 2020 to June 10, 2020.
- EPA is also asking for information and data on other PFAS substances, as well as seeking comment on potential monitoring requirements and regulatory approaches EPA is considering for PFAS chemicals. EPA will follow the drinking water standard setting process required by the Safe Drinking Water Act.
- If you ask me to conclusively tell you the final outcome of our pending regulatory efforts, I will have pre-judged the outcome of those efforts and will harm the legal defensibility of whatever decision I make following the process mandated by the Safe Drinking Water Act.



**WIFIA BORROWERS FY 2019, FY2018, FY 2017 SELECTION ROUNDS**  
**Status as of May 7, 2020**

**ROUND 3: FY 2019 SELECTION ROUND:**

- Total Letters of Interest received: 51
- Number of projects selected to apply for a WIFIA loan: 38
- Total water infrastructure investment supported: over \$12 billion
- Number of people benefited: 24 million in 18 states

	<b>Borrower</b>	<b>Status</b>	<b>Project Type</b>
1.	City of Phoenix, Arizona	Invited to Apply	Drinking Water
2.	Vallejo Flood & Wastewater District, California	Invited to Apply	Wastewater
3.	San Luis & Delta-Mendota Water Authority, California	Invited to Apply	Drinking Water
4.	San Francisco Public Utilities Commission, California	Application Received	Wastewater
5.	East County Advanced Water Purification Joint Powers Authority, California	Invited to Apply	Water Recycling
6.	City of Roseville, California	Invited to Apply	Water Recycling
7.	Monterey One Water, California	Invited to Apply	Water Recycling
8.	City of Oceanside, California (Buccaneer)	Invited to Apply	Water Recycling
9.	City of Oceanside, California (Pure Water)	Invited to Apply	Water Recycling
10.	Soquel Creek Water District, California	Invited to Apply	Water Recycling
11.	Poseidon Resources (Huntington Beach), California	Invited to Apply	Drinking Water
12.	South Coast Water District, California	Invited to Apply	Drinking Water
13.	City of Daly City, California	Invited to Apply	Wastewater
14.	City of San Mateo, California	Invited to Apply	Wastewater
15.	Miami-Dade Water and Sewer Department, Florida	Invited to Apply	Wastewater
16.	Polk Regional Water Cooperative, Florida	Invited to Apply	Drinking Water
17.	City of Atlanta, Georgia	Invited to Apply	Drinking Water
18.	City of Joliet, Illinois	Invited to Apply	Drinking Water
19.	Sewerage and Water Board of New Orleans, Louisiana	Invited to Apply	Wastewater
20.	Baltimore City Department of Public Works, Maryland (Water)	Invited to Apply	Drinking Water
21.	Baltimore City Department of Public Works, Maryland (Stormwater)	Invited to Apply	Wastewater
22.	Baltimore City Department of Public Works, Maryland (Wastewater)	Invited to Apply	Wastewater
23.	Downriver Utility Wastewater Authority, Michigan	Invited to Apply	Wastewater
24.	New Jersey Infrastructure Financing Authority, New Jersey	Invited to Apply	Wastewater and Drinking Water



25.	Greenville Utilities Commission, North Carolina	Invited to Apply	Drinking Water
26.	Metro Flood Diversion Authority, (Fargo) North Dakota	Invited to Apply	Wastewater
27.	City of Portland, Oregon	Invited to Apply	Drinking Water
28.	City of Beaverton, Oregon	Invited to Apply	Drinking Water
29.	Narragansett Bay Commission, Rhode Island	Invited to Apply	Wastewater
30.	Bristol County Water Authority, Rhode Island	Invited to Apply	Drinking Water
31.	Columbia Power & Water Systems, Tennessee	Invited to Apply	Drinking Water
32.	Salt Lake City Department of Public Works, Utah	Application Received	Wastewater
33.	City of Alexandria Sanitation Authority, Virginia	Invited to Apply	Wastewater
34.	City of Newport News Waterworks Department, Virginia	Not applying	Drinking Water
35.	Hampton Roads Sanitation District, Virginia	Invited to Apply	Aquifer Recharge
36.	City of Tacoma Sewer Utility, Washington	Application Received	Wastewater
37.	King County, Washington	Invited to Apply	Wastewater
38.	City of Wausau, Wisconsin	Invited to Apply	Drinking Water

**ROUND 2: FY 2018 SELECTION ROUND:**

- Total Letters of Interest received: 62
- Number of projects selected to apply for a WIFIA loan: 39
- Total water infrastructure investment supported: over \$10 billion
- Number of people benefited: 22 million in 16 states and Washington, D.C.

	<b>Borrower</b>	<b>Status</b>	<b>Loan Amount</b>	<b>Project Type</b>
1.	City of Phoenix, Arizona	Not Applying		Drinking Water
2.	San Mateo-Foster City Public Financing Authority, California	Application Received		Wastewater
3.	Coachella Valley Water District, California	Loan issued (1/27/20)	\$54.1 million	Stormwater
4.	Poseidon Resources (Carlsbad), California	On hold		Desalination
5.	City of Stockton Public Financing Authority, California	Application Received		Wastewater
6.	Silicon Valley Clean Water, California	Loan Issued (7/11/19)	\$218 million	Wastewater
7.	City of Sunnyvale, California	Application Received		Wastewater
8.	San Juan Water District, California	Not Applying		Drinking Water



9.	City of Los Angeles, California	Application Received		Water Recycling
10.	Inland Empire Utilities Agency, California	Application Received		Wastewater
11.	Sanitation District No. 2 of Los Angeles County, California	Application Received		Wastewater
12.	City of Antioch, California	Not Applying		Desalination
13.	District of Columbia Water and Sewer Authority, District of Columbia	Application Received		Wastewater, Drinking Water, and Stormwater
14.	Florida Key Aqueduct Authority, Florida	Application Received		Desalination
15.	City of North Miami Beach Water, Florida	Application Received		Drinking Water
16.	Miami-Dade County, Florida	Application Received		Wastewater
17.	Tohopekaliga Water Authority, Florida	Loan issued (2/12/20)	\$40.1 million	Wastewater
18.	Pinellas County Utilities, Florida	Not Applying		Wastewater
19.	DeKalb County Government, Georgia	Application Received		Wastewater
20.	City of Atlanta, Georgia	Application Received		Wastewater
21.	City of Wichita, Kansas	Loan issued (4/23/20)	\$280 million	Drinking Water
22.	City of Frontenac, Kansas	Not Applying		Drinking Water
23.	Louisville and Jefferson County Metropolitan Sewer District, Kentucky (Upper Middle Fork)	Not Applying		Wastewater
24.	Louisville and Jefferson County Metropolitan Sewer District, Kentucky (Ohio River)	Not Applying		Wastewater
25.	Louisville and Jefferson County Metropolitan Sewer District, Kentucky (Morris Forman)	Application Received		Wastewater
26.	American Water Capital Corporation (Saint Louis) Missouri	Application Received		Drinking Water
27.	American Water Capital Corporation (Joplin), Missouri	Not Applying		Drinking Water
28.	Kansas City Missouri Water Services Department, Missouri	Not Applying		Wastewater
29.	City of Cortland, New York	Loan will be issued (5/7/20)	\$16.2 million	Wastewater, Drinking Water, and Stormwater
30.	Monroe County, New York	Not Applying		Wastewater
31.	Brunswick County, North Carolina	Withdrew Application		Drinking Water



32.	Enid Municipal Authority, Oklahoma	Not Applying		Drinking Water
33.	City of Hillsboro, Oregon	Loan Issued (8/16/19)	\$250 million	Drinking Water
34.	Tualatin Valley Water District, Oregon	Loan Issued (8/2/19)	\$388 million	Drinking Water
35.	City of Lancaster, Pennsylvania	Not Applying		Wastewater
36.	Narragansett Bay Commission, Rhode Island	Loan Issued (8/27/19)	\$269 million	Wastewater
37.	City of Memphis, Tennessee	Application Received		Wastewater
38.	City of Seattle, Washington	Loan issued (4/24/20)	\$192.2 million	Wastewater
39.	Waukesha, Wisconsin	Application Received		Wastewater and Drinking Water

**ROUND 1: FY 2017 SELECTION ROUND:**

- Total Letters of Interest received: 43
- Number of projects selected to apply for a WIFIA loan: 12
- Total water infrastructure investment supported: \$5 billion
- Number of people benefited: 20 million in 9 states

	<b>Borrower</b>	<b>Status</b>	<b>Loan Amount</b>	<b>Project Type</b>
1.	Miami-Dade Water and Sewer Department, Florida	Loan Issued (3/22/19)	\$99.7 million	Wastewater
2.	Metropolitan Saint Louis Sewer District, Missouri	Loan Issued (12/19/18)	\$47.7 million	Wastewater
3.	City of Omaha, Nebraska	Loan Issued 6/20/18)	\$69.7 million	Stormwater
4.	Orange County Water District, California	Loan Issued (7/26/18)	\$135 million	Drinking Water
5.	City of San Diego, California	Loan Issued (11/14/18)	\$614 million	Water Reclamation
6.	Indiana Finance Authority, Indiana	Loan Issued (9/6/19)	\$436 million	Drinking Water and Wastewater
7.	King County, Washington	Loan Issued (4/19/18)	\$134.5 million	Stormwater
8.	Baltimore City Department of Public Works, Maryland	Loan issued (12/20/18)	\$202 million	Wastewater and Stormwater
9.	Maine Water Company, Maine	Not Applying		Public Water System
10.	City of Oak Ridge, Tennessee	Loan issued (10/17/19)	\$20.7 million	Drinking Water
11.	City of Morro Bay, California	Loan issued (3/9/20)	\$61.7 million	Water Recycling
12.	San Francisco Public Utilities Commission, California	Loan Issued (7/27/18)	\$699 million	Wastewater







# **WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) PROGRAM**

## **BACKGROUND:**

- The WIFIA program is a federal loan and guarantee program at EPA that aims to accelerate investment in the nation's water infrastructure by providing long-term, low-cost, supplemental credit assistance for regionally and nationally significant projects.
- WIFIA loans can finance a broad array of water infrastructure projects and can be accessed by state, local, and tribal governments as well as private entities including public-private partnerships. WIFIA loans can be paired with State Revolving Fund (SRF) loans.
- Congress appropriates funding for the WIFIA program in the form of credit subsidy to cover expected losses, e.g. loan default. Because expected losses in the water infrastructure industry are low, the WIFIA program can set aside a small amount of Federal dollars as the loan loss reserve for a much larger loan.
- In the FY 2020 Appropriation Act, Congress directed EPA, OMB, and Treasury, in consultation with CBO, to develop criteria on Federal assets within 120 days of enactment of the Act. The 120 days expires on April 20, 2020. EPA is prohibited from issuing a WIFIA notice of funding availability (NOFA) for 2020 appropriations until criteria have been jointly published in the Federal Register.
- The result of the determination of Federal asset criteria may have an impact on other agency programs such as the Department of Transportation, the Army Corps of Engineers and the Bureau of Reclamation. These agencies have statutory mandated programs that use the similar Federal asset determinations.

## **KEY POINTS:**

- The FY 2020 Appropriations Act requires that \$5 million of the appropriation be used solely for loans and loan guarantees to State infrastructure financing authorities. EPA is developing the process for State infrastructure financing authorities to request WIFIA loans as authorized by WIFIA section 5033(c) and appropriated in FY 2020.
- EPA anticipates issuing the FY 2020 Notice of Funding Availability once the criteria on Federal assets are developed. .
- The FY 2021 President's Budget requests \$25 million for the WIFIA program. Congress appropriated \$60 million for FY 2020.
- The FY 2021 request is consistent with the FY 2020 request level.

## **TALKING POINTS:**

- As of May 7, 2020, EPA has issued 20 WIFIA loans totaling \$4.2 billion in credit assistance to help finance \$9.4 billion for water infrastructure projects while creating more than 19,000 jobs.
- Over the first three years of the program, the WIFIA program has been able to leverage the funding it receives from Congress in the range of 100:1. Meaning that for every \$10 million Congress appropriates, the WIFIA program is able to offer \$1 billion in financing.
- These loans help finance drinking water and wastewater projects across our country and help create thousands of jobs.
- Based on the congressional directive requiring development of criteria to assess Federal assets, the timeline to issue the FY 2020 NOFA will be delayed.
- The outcome of the new WIFIA criteria for project eligibility could impact the overall program and the number of loan closings per year.



**SAN FRANCISCO PUBLIC UTILITY COMMISSION /  
CITY AND COUNTY OF SAN FRANCISCO OCEANSIDE PERMIT**

**BACKGROUND:**

**Enforcement**

- EPA inspected San Francisco Public Utility Commission (SFPUC) in 2015 and 2016 and found permit violations associated with their 36 combined sewer overflow locations that discharge over a billion gallons of partially treated or untreated sewage to the Pacific Ocean and San Francisco Bay each year. EPA followed up the inspections with an information request in February 2016. After receiving the information request SFPUC sought and obtained a meeting with former Regional Administrator Jared Blumenfeld.
- During this time period, EPA did not prepare a formal inspection report and did not enter the violations into the Agency's publicly available environmental enforcement database, ECHO.
- During this time period, SFPUC also was being sued by its own citizens for raw sewage backups into basements and spills out of sewer manholes onto streets. A group called "Solutions not Sandbags" was created to raise awareness of San Francisco's sewer failures.
- In this Administration, EPA began enforcement actions against SFPUC. On October 2, 2019 EPA issued a notice of violation (NOV) spelling out the permit violations alleged. The NOV provided a basis to make the public aware of SFPUC's violations by entering them into ECHO, increasing public awareness.
- The NOV finds that SFPUC has been discharging approximately **1.5 billion of gallons of combined sewage annually**, including into areas where recreation takes place, and more recent data show the actual volumes are closer to 2 billion gallons a year.
- The NOV finds that SFPUC's failure to properly maintain its infrastructure is creating public health risks such as the pump station failures that have diverted substantial volumes of raw and partially treated sewage to flow across beaches into San Francisco Bay and the Pacific Ocean and pipe failure that have caused sewage to flow across streets and into people's homes.
- The NOV also finds violations of water quality standards.
- Finally, the NOV finds that SFPUC has been facility to notify the public when it has these discharges that threaten public health.

**Permitting**

- Both of the City and County of San Francisco's 2009 NPDES permits expired several years ago but were administratively extended. In 2019, EPA and State of California jointly issued a new permit to the City and County of San Francisco for its Oceanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled Water Project (commonly referred to as the "Oceanside Permit"). The discharges authorized in this permit occur through seven nearshore combined sewer discharge structures that discharge into nearshore waters within California's boundary and one deepwater ocean outfall that terminates approximately four nautical miles offshore in federal waters. That permit requires compliance with applicable water quality standards, including when combined sewer overflows (CSOs) discharge to the Pacific Ocean. (However, currently the bacteria (fecal coliform) standards are not applicable to those discharges since California has granted SFPUC an "exception" from bacteria standards since 1979). The permit also requires a review of the city's plan to address CSOs, particularly CSOs that discharge near beaches.
- EPA plans to review SFPUC's bacteria "exception."



- Before the new permit was issued, the City and County of San Francisco filed comments on the draft permit objecting to permit conditions requiring compliance with water quality standards as well as the requirement to determine if it is feasible to end CSO discharges to sensitive areas, like beaches.
- On January 13, 2020, the City and County of San Francisco filed a permit appeal with EPA's Environmental Appeals Board, objecting to the water quality based effluent limitations in the permit and the permit requirement to update its sewer overflow control plan to address CSO discharges to sensitive areas. The challenged provisions of the new permit applicable to San Francisco's federally authorized discharges are stayed during the pendency of the proceeding before the EAB. On May 11, 2020, the EAB denied San Francisco's motion to stay the permit's terms for all of its federally and state-authorized discharges.
- SFPUC is implementing a Sewer System Improvement Program. But that program does not include adequate investments to address SFPUC's CSO discharges and as a result does not ensure compliance with water quality standards.

## **KEY POINTS:**

### **Enforcement**

- EPA inspected San Francisco Public Utility Commission (SFPUC) in 2015 and 2016 and found permit violations associated with their 36 combined sewer overflow locations that discharge over a billion gallons of partially treated or untreated sewage to the Pacific Ocean and San Francisco Bay each year.
- EPA followed up the inspections with an information request in February 2016. After receiving the information request SFPUC sought and obtained a meeting with former Regional Administrator Jared Blumenfeld. During this time period, EPA did not prepare a formal inspection report and did not enter the violations into the Agency's publicly available environmental enforcement database, ECHO.
- In this Administration, EPA began enforcement actions against SFPUC. On October 2, 2019 EPA issued a notice of violation (NOV) spelling out the permit violations alleged. The NOV allowed EPA to enter the violations into ECHO, increasing public awareness.
- Over 100 cities are in the process of addressing sewer overflow discharges under EPA consent decrees. These decrees require elimination of discharges to sensitive areas, like recreational waters, and reduction of other discharges to the extent needed to protect water quality standards. Almost all major cities with are under EPA enforcement except for San Francisco and New York.

### **Permitting**

- No other city has a state-issued exemption from meeting bacteria standards. The City of San Francisco is an outlier. EPA is not certain that the "exception" that is listed in the City and County of San Francisco's Oceanside Permit authorized by the State of California in 1979 meets the currently applicable requirements for a variance under the CWA and EPA's variance regulations.
- In issuing the new Oceanside Permit, EPA worked to ensure the permit is consistent with EPA's CSO policy and that authorized discharges will meet applicable Water Quality Standards of the receiving waters.
- Before the Environmental Appeals Board, San Francisco has challenged the receiving water limitations in new permit as well as the requirement for San Francisco to update its Long-Term Control Plan and the requirement for San Francisco to report all sewer overflows. These



provisions are stayed pending final action by the EAB, consistent with EPA's regulations.

**TALKING POINTS:**

- In this Administration, we take CWA violations at municipal treatment plants very seriously. San Francisco is no exception.
- EPA Region 9 issued a Notice of Violation to the City based on data showing discharges of approximately 1.5 billion gallons of combined sewage and stormwater into the Bay and Pacific Ocean.
- There have been instances of sewage flowing onto beaches, across streets, and into people's homes.
- To protect public health and water quality we are willing to use our authorities to compel compliance with the Clean Water Act if the City is unwilling to make enforceable commitments needed to eliminate discharges of raw or lightly treated sewage into the water.
- In December 2019 EPA issued a new permit to the City and County of San Francisco for its plant that discharges to the Pacific Ocean. I am disappointed that San Francisco has decided to challenge its new permit before EPA's Environmental Appeals Board. That challenge is currently pending.
- EPA Region 9 intends to defend the permit against San Francisco's challenge.



## **CLEAN WATER ACT (CWA) SECTION 401 WATER QUALITY CERTIFICATION**

### **BACKGROUND:**

- Under CWA Section 401, a federal agency cannot issue a permit or license for an activity that may result in a discharge into waters of the United States, unless a state or authorized tribe where the discharge originates issues a Section 401 certification or waives its authority to do so.
- When issued, the Section 401 certification indicates the discharge complies with all applicable water quality requirements.
- States and authorized tribes must act on a request for certification within a reasonable period of time, which shall not exceed one year.
- If a state or tribe fails to act within a reasonable period of time, the federal licensing and permitting agency may find that the state or tribe waived the section 401 certification requirement and issue the federal license or permit.
- The CWA establishes two distinct roles for the EPA:
  - Certifying on behalf of a state or tribe lacking Section 401 certification authority or on lands of exclusive federal jurisdiction.
  - Overseeing the process by which neighboring states have an opportunity to raise concerns about a federal license or permit and its associated discharge.
- The EPA's current water quality certification regulations were promulgated in 1972 before Section 401 was enacted.
- Consistent with the President's April 2019 Executive Order promoting energy infrastructure and economic growth, the EPA issued a proposed rule on August 22, 2019, to modernize and clarify the implementation of CWA Section 401. The agency proposed to:
  - Clarify that a certifying authority must act on a request for certification in the timeframe determined by the federal licensing or permitting agency, that it may not exceed one year from the receipt of the request, and that the timeframe may not stop or pause for any reason.
  - Clarify that the scope of a certification review is limited to the water quality related impacts from a point source discharge into a water of the United States.
  - Define the contents that must be included in a certification request and a certification decision.
  - Define the role of a federal licensing or permitting agency to determine (1) the reasonable period of time for a certifying authority to act on a certification request, (2) whether and when waiver has occurred, and (3) whether a certification denial or grant with conditions complies with Section 401 and the proposed rule.
  - Clarify the EPA's role as a certifying authority and in the context of notifying a neighboring jurisdiction.
- EPA received and reviewed more than 100,000 public comments on the proposed rule, and developed a draft final rule consistent with the Executive Order.
- The Executive Order directs EPA to complete the rulemaking in May 2020.
- The EPA submitted the draft final to OMB in early April 2020 for interagency review.



### **KEY POINTS:**

- Section 401 certification authority has raised some concerns, given the length of time some states have taken to certify or deny certification and that some states have denied certification based on non-water quality concerns. Several elected officials have written to EPA asking to provide clarity on the Section 401 certification process and to provide regulatory certainty for project proponents and permittees.
- Senator Barrasso introduced S. 3303, the Water Quality Certification Improvement Act of 2018 to clarify the scope and processes for states to evaluate water quality impacts under Section 401.
- An EPA career official, along with officials from other agencies, testified before the Senate Environmental and Public Works Committee on Section 401 in 2018.
- Several state associations have written to congressional leaders and to EPA asking to maintain state sovereignty and statutory authorities to protect water quality within their boundaries.
- The EPA conducted outreach to states, tribes, and the public on this proposed rulemaking.
  - The Agency held an in-person public hearing in Salt Lake City, Utah, on September 5-6, 2019.
  - Additionally, the Agency held in-person state and tribal meetings in Salt Lake City and Chicago, Illinois, to engage directly with state and tribal officials on the proposed rulemaking.
    - State attendees in Salt Lake City – OR, CO, UT, WA, OK, WY, TX, NY
    - State attendees in Chicago – IN, NY, MO, OH, MN, WI, MI, IL

### **TALKING POINTS:**

- Section 401 of the CWA provides authority for states and authorized tribes to protect their water quality.
- I am mindful of the balance of authority between states and the federal government embodied in the CWA.
- We considered public comments and developed a new regulation to modernize and clarify the timeline and scope of CWA section 401 certification review and action consistent with the plain language of the CWA and are working diligently to complete the interagency review process and finalize the rule within the timeframe established by the President.
- Contrary to some allegations, the final rule will not prohibit states or tribes from protecting water quality within their borders under the Section 401 certification process.



## **PERCHLORATE DRINKING WATER REGULATION**

### **BACKGROUND:**

- EPA issued a preliminary determination not to regulate perchlorate in October 2008 and issued an Interim Health Advisory for perchlorate of 15 parts per billion that same year.
- After reevaluating, EPA issued a final determination to regulate perchlorate on February 11, 2011, triggering a mandatory duty under the Safe Drinking Water Act (SDWA) to propose a regulation within 24 months. This is the EPA's only positive regulatory determination since the 1996 Safe Drinking Water Act (SDWA) Amendments.
- In February 2016, the Natural Resources Defense Council (NRDC) sued EPA for failure to perform a mandatory duty under the SDWA to propose a perchlorate regulation by February 13, 2013.
- The EPA entered into a consent decree with NRDC to sign a proposed National Primary Drinking Water Regulation for perchlorate by October 31, 2018 and a final rule by December 19, 2019. The signature dates were subsequently extended to May 28, 2019 for the proposed rule and June 19, 2020 for the final action.
- The EPA's 2011 determination to regulate perchlorate was informed by occurrence in public water systems compared to Health Reference Levels calculated using a Reference Dose (RfD) approach.
- In 2013, the Science Advisory Board (SAB) recommended that EPA use models, rather than the traditional RfD approach, to develop a Maximum Containment Level Goal for perchlorate.
- In response to SAB feedback, the EPA and the Food and Drug Administration scientists worked collaboratively to develop mathematical models to predict the biological effects perchlorate exposure has on thyroid function in first trimester pregnant women and their children.
- EPA also assessed epidemiology studies that examined the impacts of thyroid hormone changes in pregnant women upon their children's neurodevelopment.
- In January 2018, EPA conducted expert peer review of state-of-the-science quantitative tools for understanding the health effects of perchlorate in drinking water.

### **KEY POINTS:**

- On June 26, 2019, EPA published the notice of proposed rulemaking seeking public comment on a range of options regarding the regulation of perchlorate in public drinking water systems.
  - In September 2019, the court granted EPA a 6-month extension of the deadline for a final perchlorate rule. The deadline for signature is now June 19, 2020.
- EPA sought comment on a proposed National Primary Drinking Water Regulation (NPDWR) for perchlorate to establish a Maximum Contaminant Level (MCL) and a health-based Maximum Contaminant Level Goal (MCLG) at 56 micrograms per liter.
- In addition, the EPA sought comment on three alternative regulatory options:
  - An MCL and MCLG for perchlorate set at 18 micrograms per liter.
  - An MCL and MCLG for perchlorate set at 90 micrograms per liter.
  - Withdrawal of the EPA's 2011 determination to regulate perchlorate in drinking water.

### **TALKING POINTS:**

- EPA asked for input from the public on a range of options regarding the regulation of perchlorate in public drinking water systems in its June 2019 proposal.
- EPA is carefully reviewing the public comments to inform the final action by June 2020 as required by the consent decree.



## **A2: Recent Press Reports and Inquiries**

*Q: Is EPA withdrawing the regulatory determination for perchlorate?*

- EPA has not yet made a final decision on that proposal despite the false reporting that EPA has already concluded its decision-making process. We included withdrawal of the regulatory determination as one possible option in the agency's proposal on the regulation of perchlorate. This option was included based on information put forward by career scientists at the Agency. Sharing any additional information now would be premature, as we have not concluded that decision making process.

*Q: Does EPA have authority to withdraw the regulatory determination?*

- As we explained in our proposal, EPA has authority to reconsider its decisions. EPA included withdrawal of the regulatory determination as one possible option in its proposal on the regulation of perchlorate issued in June 2019, but we have not made any final decisions at this time.

*Q: If EPA withdraws the regulatory determination, will EPA be in violation of the consent decree?*

- EPA has not yet made a final decision on the proposal. Despite the false reporting that EPA has already concluded its decision-making process, we will make all final decisions in a manner consistent with the Safe Drinking Water Act and the Consent Decree, in consultation with the Department of Justice.



## SCIENCE ADVISORY BOARD AND WOTUS

### **BACKGROUND:**

- On February 27, 2020, the EPA Science Advisory Board (SAB) released a document titled “Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the Clean Water Act” (proposed “Step 2” WOTUS Rule).
- The relevant comments raised in the SAB’s commentary were raised by public commenters as part of the public notice process on the proposed “Step 2” rule to revise the WOTUS definition, and if not already addressed in the proposal, are addressed in the final Navigable Waters Protection Rule and associated supporting materials.

### **KEY POINTS:**

- As part of the SAB’s charter and consistent with EPA’s procedures, the SAB reviewed EPA’s regulatory agenda and chose to consider the proposed “Step 2” WOTUS rule among its activities to provide extramural scientific information and advice to the Administrator.
- Staff from the EPA Office of Water fully participated in informational and more formal meetings and teleconferences with SAB representatives at their request in advance of the issuance of the proposed “Step 2” WOTUS rule (February 16, 2018 and May 31, 2018), after publication of the proposed rule (April 25, 2019), and during the SAB’s public meeting in Washington, DC, on June 6, 2019.
- The SAB’s commentary states that the proposed WOTUS rule “does not fully incorporate [EPA’s 2015 Connectivity Report]” and “offers no comparable body of peer reviewed evidence ....”
- The SAB draft commentary raised:
  - the absence of groundwater protection (which the agencies have not considered jurisdictional in any previous WOTUS definition);
  - the exclusion of “irrigation canals” (which the agencies do not use as a term in the final Navigable Waters Protection Rule, though “irrigation ditches” constructed in uplands and “irrigation return flows” generally have been excluded under previous regulations and exempted by the CWA itself, respectively);
  - the exclusion of “adjacent wetlands that do not abut or have a direct hydrologic surface connection to otherwise jurisdictional waters” (which the agencies address at length in the final rule preamble); and
  - the absence of “long term clarity” (citing a lack of scientific basis (addressed in talking points below)).

### **TALKING POINTS:**

- As the EPA and the Army made clear in both the proposal and the final rule, the agencies’ revised definition of “waters of the United States” is primarily guided by the statutory authority delegated by Congress under the Clean Water Act and the legal precedent set by key Supreme Court cases.
- The agencies are precluded from exceeding their delegated authorities to achieve specific policy, scientific, or other outcomes.
- In the Clean Water Act, Congress explicitly directed the agencies to protect “navigable waters.” The Navigable Waters Protection Rule regulates these waters and the core tributary system that provides perennial or intermittent flow to them.



- The agencies' definition of "waters of the United States" is informed by science, but science cannot dictate where to draw the line between federal and state or tribal waters, as those are legal distinctions established within the overall framework and construct of the Clean Water Act.
- The agencies did use the Connectivity Report to inform certain aspects of the final definition such as recognizing the "connectivity gradient" among waters and the role of perennial, intermittent, and ephemeral streams within a tributary system.



## **CLEAN WATER ACT (CWA) SECTION 404 ASSUMPTION RULEMAKING AND ACTIVITIES**

### **BACKGROUND:**

- Michigan and New Jersey are currently the only states that administer the Section 404 program. States and tribes have cited various reasons for not assuming the CWA Section 404 program including lack of dedicated federal funding, inconsistency between state and federal authorities, lack of partial assumption authority, and lack of clarity on which waters of the U.S. the Army Corps of Engineers (Corps) retains.
- In 2018, the EPA announced it would clarify the regulations addressing the requirements and process for states and tribes to assume the CWA Section 404 dredged and fill permitting program.
  - From 2015-2017, an EPA Federal Advisory Committee Act (FACA) subcommittee provided the Administrator with recommendations on how the EPA could clarify which waters states and tribes may assume under CWA Section 404(g) for purposes of issuing dredged or fill permits.
  - In July 2018, the Assistant Secretary of the Army for Civil Works issued a memorandum to the Corps clarifying which waters states and tribes may assume.
  - Between October 2018 and January 2019, the EPA held early input sessions with states and consulted with tribes on what should be clarified in the regulatory revision.

### **KEY POINTS:**

- Congress gave states and tribes the authority to assume the CWA Section 404 dredged and fill permitting program for certain waters within their state/tribal boundaries. Under Section 404(g), the EPA approves state and tribal requests to assume the program.
- The EPA has worked with multiple states and tribes who considered assumption, but for various reasons chose not to pursue the program. EPA is actively working with Florida, Minnesota, Nebraska, Oregon, and others who have expressed interest in assuming the program.
- How state programs and permits are treated under the Endangered Species Act (ESA) has been an obstacle to states and tribes assuming the 404 program. The EPA is working with Florida and other states on addressing ESA considerations in program assumption and the Agency has identified Florida as a designated federal representative to work with the Departments of Interior and Commerce on initial consultation issues.
- In response to input from states and tribes, the Agency initiated a rulemaking to revise our 1988 regulations to clarify and modernize the regulations. In 2018, EPA conducted tribal consultation as well as pre-proposal input meetings and webinars with states and tribes. States and tribes then provided pre-proposal recommendations to EPA in early 2019.
- The EPA is currently developing options for the rulemaking.

### **TALKING POINTS:**

- EPA is taking action to better balance the responsibilities for protecting our environment between the federal government and states.
- EPA has initiated a rulemaking to modernize our existing assumption regulations to reduce barriers for states and tribes to assume the Section 404 permitting program and expects to issue a proposal in 2020.
- By empowering states and tribes to take on this permitting responsibility, we can achieve greater efficiencies in infrastructure and other permitting decisions while continuing to protect the environment.



## ALASKA NATIVE VILLAGES

### **Background:**

- Congress authorized the Alaska Native Villages (ANV) program in 1995. The program provides grants to the State of Alaska to fund improvements and construction of drinking water and wastewater treatment facilities for homes in rural and native villages.
- The State of Alaska administers the funding to bring piped water and wastewater systems to rural communities, or to provide individual wells and septic systems to rural communities not served by piped infrastructure.
- The estimated proportion of serviceable homes in rural Alaska that lack access to in-home running water and a flush toilet is 3 percent, compared to 0.67 percent for the remainder of the country.
- Investments in wastewater and drinking water infrastructure in rural Alaska and ANV communities contributed to an increase of access to water and sewer service from 60 percent in the late 1990s to a current level of 94.9 percent of serviceable rural Alaska homes.
- Alaskan rural and native water and sewer systems face not only the typical challenges associated with small system size (e.g. affordability and staffing), but also geographic conditions such as permafrost, shortened construction seasons, and highly remote locations.
- The ANV Program awarded FY19 funds to 13 water or sewer infrastructure construction projects that will ultimately improve water/sewer services to 2,750 Alaskan rural and native homes.

### **Key Points:**

- The FY 2021 President's Budget requests \$3 million for the ANV program, the same level as the FY20 request, and a \$26 million reduction from the FY20 appropriation.
- The FY 2020 Congressional appropriation funded the ANV program at \$29.2 million, an increase of more than \$4 million over the FY 2019 level.
- The EPA estimates the FY 2021 request level of \$3 million will improve the drinking water and/or wastewater services to approximately 350 homes in rural Alaska.

### **Talking Points:**

- Improving water infrastructure throughout the nation, including, Alaska, is a priority for this Administration.
- The President's Budget supports baseline funding for the Alaska Native Villages program while also emphasizing the availability of other funding mechanisms at the state and federal level, such as the State Revolving Funds and small system technical assistance grants.
- The Clean Water and Drinking Water State Revolving Funds will continue to fund water system improvements in Alaska. In the FY21 request, the allotment for the state of Alaska for the CWSRF is \$6.5 million and \$8.4 million for the DWSRF.



## **AMERICA'S WATER INFRASTRUCTURE ACT (AWIA)**

### **BACKGROUND:**

- In October 2018, the President signed the America's Water Infrastructure Act (AWIA).
- AWIA authorizes 32 programs at EPA, many of which strengthen existing programs, others are completely new, and all provisions address significant public health and environmental needs.
- AWIA modifies the Water Infrastructure Finance and Innovation Act (WIFIA) program, the Drinking Water State Revolving Fund (DWSRF), the Clean Water State Revolving Fund (CWSRF), and the Water Infrastructure Improvements for the Nation (WIIN) Act drinking water grant programs.
- AWIA's program authorities will help EPA build on its mission to protect public health and the environment, increase infrastructure investment, and improve drinking water and water quality across the country.
- AWIA programs will build capacity and improve compliance at drinking water systems, support source water protection, and improve the information citizens receive about their drinking water.
- AWIA provides programs focused on helping low income families and rural, small, and tribal water and wastewater systems.
- AWIA programs will ensure the water sector is more resilient by requiring risk assessments and emergency response planning, providing assistance for areas affected by natural disasters, and promoting water-efficiency through authorization of the EPA's WaterSense program.
- AWIA authorizes over \$300 million for grant programs supporting water system resiliency, technical assistance, remediation for schools with lead in their drinking water, the water workforce, and water infrastructure, including innovative technologies and sewer overflow control.
- Many AWIA programs include the phrase "subject to appropriations" in the law, meaning the program requires funding in order to be implemented. This is true for the changes AWIA makes to the drinking water systems Unregulated Contaminant Monitoring Rule.

### **KEY POINTS:**

- Fulfilling the many requirements of AWIA, Water Infrastructure Improvement Act, and WIIN will be a challenge for EPA, requiring a significant investment of resources to implement the Act.
- In FY 2019, Congress did not appropriate specific funds for AWIA implementation; however, the EPA did work on several actions that aligned with the purpose FY 2019 funding. For example, using an existing mechanism, the Environmental Finance Advisory Board, the EPA set up the Stormwater Task Force.
- The FY 2020 appropriation provided \$44M for 4 new AWIA programs that had not been funded before:
  - \$3M for Drinking Water Infrastructure Resilience and Sustainability
  - \$12M for Technical Assistance for Treatment Works
  - \$28M for Sewer Overflow Control Grants
  - \$1M for Water Infrastructure Workforce Development



- The FY 2021 President's budget requests funding for the following AWIA programs (\$117 million):
  - \$2.0 million for the Drinking Water Infrastructure Resilience and Sustainability Grant Program;
  - \$20 million for the Reduction of Lead in Drinking Water WIIN Grant Program;
  - \$10 million for the Drinking Fountain Lead Testing and Replacement Grant Program;
  - \$15 million to support the WIIN Lead in Schools grant;
  - \$7.5M for the Technical Assistance to Treatment Works Grant Program;
  - \$61.45 million for the Sewer Overflow Control Grants; and,
  - \$1.0 million for the Water Infrastructure and Workforce Investment Grant Program.
  - Note: The Small & Disadvantaged WIIN Grant is proposed for elimination.
    - Senator Sullivan and other SEPW members are supporters of this grant.

**TALKING POINTS:**

- The FY 2021 President's Budget requests \$117 million for America's Water Infrastructure Act (AWIA) programs to improve water quality and protect public health.
- EPA appreciates Congress' shared interest in protecting the health of all Americans and protecting our vital water resources by enacting legislation aimed at supporting our nation's investments in water infrastructure.
- Many AWIA programs have been funded in FY 2020, but others have not.
  - EPA is implementing the AWIA programs Congress funded in FY 2020.
  - EPA also stands ready to implement other provisions of the law, such as changes to Unregulated Contaminant Monitoring Rule, that cannot be implemented until funding is appropriated.



## CHESAPEAKE BAY

### **BACKGROUND:**

#### **Funding**

- On December 20, 2019, the President signed the Consolidated Appropriations Act of 2020, which provides \$85 million for the Chesapeake Bay Program, \$12 million dollars above the \$73 million provided in the prior year.
- EPA's FY 2020 funding of \$85 million for the Chesapeake Bay Program supports state and local collection of water quality monitoring data and grants to Bay states for implementation efforts to restore the Chesapeake Bay and its local waters.
- The FY 2021 President's Budget proposes \$7.3 million to fund Chesapeake Bay monitoring program. This is about a 90% reduction to the FY 2020 enacted level.

#### **EPA efforts to restore the Bay**

- EPA is focused on supporting the Bay states' efforts to implement their Phase III Watershed Implementation Plans (WIPs). The Phase III WIPs establish the programmatic and numeric commitments the jurisdictions will take to meet their 2025 Phase III WIP planning targets.
- Draft Phase III WIPs were posted on April 12, 2019, for review and public comment. On June 21, 2019, EPA posted evaluations of the draft WIPs. The final Phase III WIPs were posted by EPA on August 23, 2019. On December 19, 2019, EPA posted its final evaluations of the Phase III WIPs.
- According to reports provided by the Bay states at the end of 2018, pollution-reducing practices were in place to meet 39 percent of nitrogen reductions and 77 percent of phosphorus reductions necessary to meet applicable water quality standards. Note: The states just reported their 2019 progress to EPA at the end of 2019. EPA is in the process of analyzing these reports.
- In addition to supporting the Bay TMDL, the Chesapeake Bay Partnership established the goal to have all practices in place by 2025 to achieve applicable water quality standards for dissolved oxygen, submerged aquatic vegetation and chlorophyll-a.

#### **Bay Director's remarks**

- On January 3, 2020, EPA's Chesapeake Bay Program Director, Dana Aunkst spoke at a Chesapeake Bay Commission meeting. His remarks were taken out of context by environmental organizations, who alleged that EPA is not committed to ensuring effective implementation of the Bay TMDL to restore the Bay.
- On January 10, 2020, Senator Van Hollen and the Democrats who are in the Bay delegation in the Senate and House wrote a letter to EPA expressing concern about Director Aunkst's remarks and EPA's commitment to the goals in the Bay TMDL.
- On January 28, 2020, EPA Region 3 Administrator Servidio responded to the January 10, 2020 letter defending the EPA's actions in the Bay.

#### **Potential Litigation to Enforce the Bay TMDL**

- On January 8, 2020, Governor Larry Hogan sent a letter to his Attorney General directing him to "take two legal actions: (1) commence litigation against the Commonwealth of Pennsylvania for repeatedly falling short of necessary pollution reduction goals; and (2) commence litigation against the U.S. Environmental Protection Agency (EPA) for failing to enforce the Chesapeake Bay Total Maximum Daily Load (TMDL)."
- On January 27, 2020, the Chesapeake Bay Foundation announced its plans to sue EPA for not enforcing the Bay TMDL.
- To date, no suits have been filed.
- It is EPA's longstanding position that TMDLs themselves are not enforceable by EPA.



## **KEY POINTS:**

### **Funding**

- Aside from Bay-specific funding, other core Clean Water Act programs, as well as the source water protection programs authorized under the Safe Drinking Water Act, continue to protect these watersheds, including the National Pollutant Discharge Elimination System Program and our work addressing nutrients and harmful algal blooms, including promoting market-based approaches.
- Promoting market-based approaches to improve water quality, like water quality trading, can reduce the cost of water quality improvements and provide a financial benefit to landowners and conservationists.

### **EPA efforts to restore the Bay**

- EPA is focused on supporting the jurisdictions' efforts to implement their Phase III WIPs. The Phase III WIPs establish the programmatic commitments and actions the jurisdictions will take to meet their specific, numeric Phase III WIP planning targets by 2025.
- EPA has many tools available to help assure implementation of the Bay TMDL.
- EPA efforts include implementation and coordination of continued scientific research, modeling, monitoring, and data collection to support the states in implementing effective Best Management Practices.
- Nonpoint sources are the largest contributor of nutrients to the Bay. States are the primary authority to control nonpoint sources of pollution. EPA has conducted significant outreach with the agriculture sector and farmers to garner their support for restoring the Bay.
- At the request of the Chesapeake Bay Program Partnership, EPA agreed to facilitate, oversee and fund the development of a separate WIP focused on reducing adverse water quality impacts to the Bay resulting from the Conowingo Dam infill. EPA's commitment and recent actions further demonstrate the agency's commitment to helping our partners meet the goals of the Chesapeake Bay TMDL.

### **Bay Director's remarks**

- The question of whether the Total Maximum Daily Load (TMDL) itself is enforceable by a court was answered by the previous administration in court filings defending the Bay TMDL.
  - In 2016, the Obama Administration told the U.S. Supreme Court that a TMDL is an informational tool that...
    - "does not impose any binding implementation requirements on the states," and
    - "the Bay TMDL does not directly regulate any sources or require any permits."
  - The Trump Administration agrees with these statements from the prior administration.
- On January 10, 2020, EPA received a letter from Senator Van Hollen and others, asserting that Director Aunkst's remarks suggest that EPA no longer takes its commitment to the Chesapeake Bay TMDL seriously.
- On January 28, 2020, EPA Region 3 Administrator Servidio responded to the January 10, 2020 letter defending the EPA's actions in the Bay. EPA's response letter also stated:
  - In its evaluations of Bay state's Phase III WIPs, EPA identified that five of the Bay jurisdictions, including Maryland, must do more to achieve their goals. EPA's evaluations also identified targeted and extensive EPA support to assist the jurisdictions in their efforts to implement the WIPs.
  - As noted in our recent WIP evaluation, Maryland has work to do to provide confidence that it can comply with its own responsibilities necessary to have all controls and practices in place by 2025 to restore the Bay. For example, Maryland committed to the reissuance of five Phase I municipal separate storm sewer (MS4) permits by December 2019, four of which expired over a year ago. The current incomplete status of this obligation has delayed Maryland's ability to meet its Bay milestone commitments.
  - Diverting our collective resources to litigation will undoubtedly distract from efforts to restore the Bay and harm the existing partnership among the parties that has been the hallmark of this effort.
  - EPA's and the jurisdictions' resources are better allocated towards continued enhancement and



implementation of plans that will improve water quality.

- The Chesapeake Bay the accountability framework developed by the Bay Program Partnership provides for oversight by EPA to assure the TMDL is implemented.
- EPA remains steadfast in its commitment to helping our partners meet the goals of the Chesapeake Bay TMDL. We will continue to provide substantial support, track progress, and take appropriate actions within our authorities to ensure the Bay and local waters are protected and restored.

## **TALKING POINTS:**

### **Funding**

- EPA is committed to working with Congress as well as our federal and state partners to achieve our shared environmental goals for the Bay.
- The FY 2020 appropriation provided an increase of \$12 million to the EPA Chesapeake Bay Program Budget. Of the \$12 million, EPA plans to use \$6 million for restoration projects through our Innovative Nutrients and Sediment Reduction and Small Watershed grant programs and \$6 million for “state-based implementation in the most effective basins.” In May, EPA will be announcing its plans for how it will allocate the funds for the “most effective basins” and issuing guidance to the jurisdictions on how those funds are to be used.
- In February 2018, the EPA provided a \$202 million WIFIA loan to modernize Baltimore’s wastewater infrastructure. This loan will fund 14 projects that will improve the reliability and performance of the city’s wastewater infrastructure, reduce polluted runoff and sewage from flowing into the Inner Harbor, and safeguard the significant investments that have been made toward restoring the Chesapeake Bay.
- Baltimore has been invited to apply for WIFIA loans for 2 other water infrastructure projects that will help the Bay. The Hampton Roads Sanitation District in Virginia has also been invited to apply for a WIFIA loan to improve water infrastructure that will help the Bay.
- In addition to traditional funding, EPA continues to encourage and facilitate the development of market-based approaches to improving water quality in the Bay and across the country. Adopting market-based and other collaborative and community-based programs can promote water quality improvements at a lower cost.

### **EPA efforts to restore the Bay**

- EPA remains steadfast in its commitment to helping our partners implement the Chesapeake Bay TMDL to ensure the Bay and local waters are protected and restored.
- As it has done since the Bay TMDL was issued, EPA will continue to use all of its existing authorities available under the Clean Water Act to ensure accountability of all Bay states and the District of Columbia regarding implementation of the Bay TMDL.
- EPA has been performing its oversight role since establishing the TMDL in 2010, most recently with the review of the Phase III Watershed Implementation Plans and will continue to do so with its evaluation of the 2020-2021 two-year milestones; draft milestones evaluations will be issued by April 30, 2020 with final evaluations expected to be posted by July 29, 2020
- EPA continues to engage directly with farmers in the Chesapeake Bay watershed.
- EPA is also working with all of the Chesapeake Bay State Agricultural Departments to develop MOUs to memorialize and enhance coordination and on-the-ground work, including working with farmers on non-point reductions. We already have MOUs in place with West Virginia and Delaware MOUs, and EPA stands ready to work with the other jurisdictions.
- One of EPA’s goals is to improve the timely expenditure of federal funds to support water quality improvements in the Bay watershed.
  - In February 2020, EPA and the National Fish and Wildlife Foundation (NFWF) announced \$2.4 million in FY 2019 grant funding for 14 projects that will help improve local waters in Pennsylvania and contribute to the restoration of the Chesapeake Bay. The awards will directly support efforts by



local governments and partners throughout the Bay watershed in Pennsylvania to implement water quality projects that reduce stormwater runoff pollution from urban, suburban, and agricultural lands. The \$2.4 million in federal funds will be leveraged with \$3.4 million in local matching funds for a total impact of nearly \$6 million.

- Additionally, EPA awarded \$464,200 of FY 2019 grant funds to the Pennsylvania Fish and Boat Commission (PFBC) to hire eight employees to assist with stream improvement projects in Pennsylvania's portion of the Chesapeake Bay watershed.
- In FY2020, EPA will be providing NFWF with an additional \$1,190,544 for local restoration projects in Pennsylvania. EPA also will be providing the PFBC \$478,214 of grant funding in FY20 and the Pennsylvania Department of Conservation and Natural Resources with \$684,868 in grant funding for riparian forest buffer projects.
- In an effort to assist all states with addressing pollutants passing through the Conowingo Dam, EPA has funded the development of a Watershed Implementation Plan (WIP) for the Dam. A draft WIP is scheduled to go out for public comment in Summer 2020. This will kick off a two-month review and comment period.
- EPA's actions to protect and restore the Bay match my promise at my confirmation hearing where I said that, "I am very much committed to the Chesapeake Bay and to the Chesapeake Bay Program."

#### **Bay Director's remarks**

- The Bay is a unique and important national resource, and EPA is fully committed to the restoration of the Bay.
- The mischaracterization of the EPA Chesapeake Bay Program Director's recent remarks is unfortunate and distracts from the good work that is being done by agency employees.
- As it has done since the Bay TMDL was issued, the EPA will continue to use its existing authorities under the Clean Water Act to ensure that all six Bay states and the District of Columbia are accountable for implementing their share of the Bay TMDL's nitrogen, phosphorus and sediment reductions.
- It is EPA's longstanding position that TMDLs themselves are not enforceable by EPA. The question of whether the Bay TMDL itself is enforceable by a court was answered by the previous administration in court filings defending the Bay TMDL. In 2016, the Obama Administration told the U.S. Supreme Court that a TMDL is an informational tool that "does not impose any binding implementation requirements on the states," and that "the Bay TMDL does not directly regulate any sources or require any permits." The Trump Administration agrees with these statements from the prior administration.
- TMDLs are informational planning tools that are typically implemented through the Clean Water Act by various state actions, including the National Pollutant Discharge Elimination System (NPDES) permits.
- EPA's response to the January 10, 2020 letter from Senator Van Hollen and others articulated the agency's continued commitment to the Bay TMDL. Our letter also noted that that five of the Bay jurisdictions, including Maryland, must do more to achieve their goals. The statements in EPA's response letter were factual and any suggestion that they were "threatening" to Maryland or any other Bay state is inaccurate/outlandish.

#### **Potential Litigation to Enforce the Bay TMDL**

- Diverting our collective resources to litigation will undoubtedly distract from efforts to restore the Bay and harm the existing partnership that has been the hallmark of this effort.
- EPA, with the Chesapeake Bay Program Partnership (all Bay states and feds), is committed to the goal of having all programs and practices in place by 2025 to restore the Bay.



## **PENNSYLVANIA'S PROGRESS (RESTORATION OF THE CHESAPEAKE BAY)**

### **BACKGROUND:**

- Based on data from 2009-2018, Pennsylvania has made significant reductions in pounds of nitrogen, phosphorus, and sediment delivered to the Chesapeake Bay through the Susquehanna River watershed. Pennsylvania has the largest share of nitrogen and sediment reduction responsibilities of all Bay states that are subject to the TMDL, and the second largest share of phosphorus reduction responsibilities. Even though the state is making progress, it is behind in its overall TMDL goals because it contributes more to the watershed overall.
- To assist Pennsylvania in spending down their unliquidated obligations of EPA Bay grant funds, in 2019, EPA redirected approximately \$4M of their grant funds to other Pennsylvania state agencies and to the National Fish and Wildlife Foundation for implementation of restoration projects within the Commonwealth. In 2020, EPA is redirecting an additional \$2.3 million of Pennsylvania's Bay grant funds to these other partners.

### **KEY POINT:**

- Pennsylvania's Phase III WIP identifies significant pollutant reductions coming from the agricultural sector. EPA believes that the most effective path to success will be for Pennsylvania to energize the agricultural sector with substantial financial, technical and administrative assistance. EPA offered and remains committed to focus our resources and priorities to assist Pennsylvania in this endeavor.

### **TALKING POINTS:**

- EPA demonstrated our commitment and accountability to the restoration of the Bay through our most recent Phase III WIP evaluations.
- The EPA identified that five of the Bay jurisdictions, including Pennsylvania, must do more to achieve their goals.
- EPA offered and remains committed to focus our resources and priorities to assist Pennsylvania in meeting its TMDL commitments.



## **CONOWINGO DAM AND CHESAPEAKE BAY**

### **BACKGROUND:**

- In 2018, the Chesapeake Bay Program Partnership (all Bay states, federal government and the Chesapeake Bay Commission) agreed to develop an additional WIP focused on reducing adverse water quality impacts to the Chesapeake Bay resulting from the Conowingo Dam infill.
- In 2019, EPA awarded three cooperative agreements to support development and implementation of the Conowingo WIP, an associated financing strategy, and a framework to track, verify, and report BMPs.
- A Steering Committee with members from each of the seven Bay watershed jurisdictions was established to oversee the development of the Conowingo WIP and financing strategy. While EPA is not an official member of the Steering Committee, the Agency will review the Conowingo WIP as part of its role under the Chesapeake Bay partnership's accountability framework.
- The draft Conowingo WIP is expected to be available for a two-month public review and comment period in Summer 2020. The final WIP is expected to be posted in Fall 2020.
- The financing strategy should be completed by March 2021.

### **KEY POINTS:**

- Exelon owns and operates the Conowingo Dam to generate renewable energy. Maryland (MD) and Exelon had been in litigation over the scope of Exelon's responsibility for pollution traveling through the dam, as described in a CWA 401 certification issued by MD.
- Maryland and Exelon have reached agreement on the terms of the CWA 401 certification for the FERC relicensing of the Conowingo Dam. Exelon will be required to invest more than \$200 million in environmental projects to improve water quality in the Lower Susquehanna River and the Chesapeake Bay. FERC's public comment period on the renewal closed on January 17, 2020.

### **TALKING POINTS:**

- The EPA has funded the development of the Conowingo Watershed Implementation Plan (WIP). A draft WIP is scheduled to go out for public comment in Summer 2020. This will kick off a two-month review and comment period.
- EPA is pleased that Maryland and Exelon have resolved their differences. EPA believes that cooperative partnerships are the key to restoring the Bay, not endless litigation.



## **COLUMBIA RIVER BASIN RESTORATION ACT**

### **BACKGROUND:**

- The Columbia River Basin is one of North America's largest watersheds, covering approximately 260,000 square miles, including Idaho, Montana, Oregon, Washington, and a portion of Canada's British Columbia province.
- The Columbia River Basin Restoration Act was standalone legislation voted out of committee that amended the Clean Water Act (CWA) to include Section 123, which directs EPA to establish a Columbia River Basin Restoration Program and to assess trends in water quality, collect and assess data to identify possible causes of environmental problems, and provides grants for projects for specific purposes, as well as establish a voluntary Columbia River Basin Restoration (CRBRP) Working Group.
- The law also requires that the President's annual budget submission include an agency cross-cut budget prepared by OMB that displays, for each federal agency involved in the protection and restoration of the Basin, funding amounts for those purposes in the preceding fiscal year, estimated budget for the current fiscal year, and the proposed budget for the next fiscal year.

### **KEY POINTS:**

- In August 2018, the Government Accountability Office (GAO) finalized a report to the House Transportation and Infrastructure Committee, "Columbia River Basin: Additional Federal Efforts Would Benefit Restoration Efforts" which made three recommendations:
  - EPA should develop a program management plan that includes a schedule for EPA actions, and resource and funding needs to establish and implement the Columbia River Basin Restoration Program, including the formation of the associated Columbia River Basin Restoration Working Group;
  - OMB should develop and provide guidance on the types of projects and activities that involved federal agencies should include in their reports; and
  - OMB should direct federal agencies to collect information for OMB to compile an interagency cross-cut budget and submit it as part of the President's FY20 budget request.
- In July and September 2018, the EPA responded to GAO with a commitment to begin implementation of CWA Section 123 through the establishment of the Columbia River Basin Work Group and the development of a Program Management Plan.
- EPA has received \$2.2M in appropriations (\$1M in FY 2019 and \$1.2M in FY 2020) to begin implementing the Act and develop a voluntary competitive grant program.
- EPA Regions 8 and 10, in order to implement the Act and stand up the Working Group and launch the grant program, have communicated and coordinated with the States of OR, WA, ID, and MT; 15 tribal governments including Yakama, Nez Perce, Umatilla, Warm Springs, Cowlitz, Grand Ronde, Colville, Spokane, Kalispel, Coeur d'Alene, Kootenai, Shoshone Bannock, Shoshone Paiute, Burns Paiute Tribe, and Salish Kootenai Tribes; and the specific entities identified in the Act including:
  - Local governments
  - Industries
  - Electric, water and wastewater utilities
  - Private landowners
  - Soil and Water Conservation Districts
  - Interested NGOs
  - General public



- The Regional Administrators from R8 and R10 sent out formal Working Group invitations on September 5<sup>th</sup> to leaders in organizations listed above, including to the four governors (OR, WA, ID, MT).
- EPA will be convening and staffing the Working Group with our first formal in person meeting in May 2020.
- EPA announced a Request for Applications (RFA) for the grant program in October 2019. The agency amplified the RFA across the Basin with outreach efforts for prospective applicants.
  - After a 90-day application period, we received 24 project proposals from all four states in the Columbia Basin with 9 in the Lower Columbia and 15 in the middle/upper Columbia portions of the Basin. Applicants include a mix of State, tribal and local governments, academic institutions, conservation districts and NGOs.
  - The total requested is over \$3.67M in funding.
  - R10 and R8 anticipate making selections in late February 2020 and awarding grants prior to summer 2020.
  - We will be utilizing both FY 2019 and FY 2020 geographic program appropriations for the grant awards (~\$2M in total awards).

#### **TALKING POINTS:**

- The EPA is committed to work with state, federal, and tribal governments, and other entities to implement the Columbia River Basin Restoration Program.
- EPA has fulfilled its requirement to establish the Columbia River Basin Restoration Working Group and the first formal in person meeting is planned for May 2020.
- EPA received 24 applicants for grants funds spanning both the lower, middle and upper Columbia Basin. We plan to make selections in late February and award grants before summer 2020.



## **COLUMBIA RIVER TEMPERATURE TMDL**

### **BACKGROUND:**

- On October 16, 2018, the U.S. District Court for the Western District of Washington issued an Order in *Columbia Riverkeeper, et al. v. Pruitt* directing the EPA to approve or disapprove a “constructive” submission of a temperature TMDL for the mainstem of the Columbia and Lower Snake Rivers, and if disapproving, to establish the TMDL 30 days later, by December 17, 2018.
- On November 30, 2018, the district court granted the EPA’s motion for a stay of the Order pending appeal.
- On December 20, 2019, the Ninth Circuit issued an opinion affirming the lower court decision that EPA was required to act on the states’ lack of submission of a TMDL for the Columbia and Lower Snake Rivers and issue its own TMDL.
- Ultimately, the U.S. District Court’s decision was upheld and pursuant to a joint stipulation between the parties, the Agency must issue the TMDL by May 18, 2020.

### **KEY POINTS:**

- The TMDL is based on a scientific assessment of temperature impairments in the mainstem of the Columbia and Lower Snake Rivers. The TMDL establishes temperature targets along the length of the mainstem Columbia and Lower Snake Rivers and allocates temperature loads for NPDES-permitted point source dischargers, dams, and major tributaries to the Columbia River. If implemented, these allocations would reduce temperature impacts of the non-point source dams and 23 tributaries.
- TMDL load allocations for non-point sources, which include most aspects of dam operations, are not enforceable under the Clean Water Act. However, the State of Washington has commented publicly that it intends to implement the federal TMDL through the CWA 401 certification process for NPDES permits issued to dams for minor discharges associated with turbines at dam, such as oil and grease from motors and small amounts of water used to cool machinery.
- EPA has coordinated extensively with a variety of stakeholders on the issues surrounding the draft TMDL.

### **TALKING POINTS:**

- The Agency must issue the TMDL by May 18, 2020.
- The TMDL addresses significant portions of the Columbia and lower Snake River that have been identified by the states of Washington and Oregon as impaired due to temperatures that exceed the states’ promulgated water quality standards.
- Temperature impairments are most significant in the late summer and early fall, when the rivers have warmed and salmon are migrating from the Pacific Ocean to spawning sites in the Columbia and Lower Snake Rivers and their tributaries.
- The Agency will invite public comment on the TMDL during a 60-day public comment period.
- After considering any comments received, the EPA will make modifications, as appropriate, and transmit the TMDL to the states of Washington and Oregon for incorporation into their current water quality management plans.
- The EPA is committed to continue coordinating with its federal, state and tribal partners on efforts to reduce temperature impairments in the Columbia and Lower Snake River.



## **GREAT LAKES RESTORATION INITIATIVE (GLRI)**

### **BACKGROUND:**

- The Great Lakes are an important part of the U.S. fresh water supply, provide economically valuable commercial and recreational fisheries and recreational opportunities, and support billions of dollars in interstate and international waterborne commerce annually.
- A 2018 University of Michigan report showed that every federal dollar spent on GLRI projects from the program's launch in 2010 through 2016 will produce an additional \$3.35 of additional economic activity in the Great Lakes region through 2036.
  - The study also shows that GLRI has created or supported thousands of jobs and that GLRI has strengthened tourism in the Great Lakes region.
- The multi-agency GLRI is authorized at \$300 million annually through 2021. Congress appropriated \$320 million in the FY 2020 appropriations bill.
- Since inception in 2010, GLRI has been central to efforts to protect the region's multi-billion dollar fishery by keeping self-sustaining populations of Asian carp out of the Great Lakes.
- EPA has re-established the Great Lakes Advisory Board under the Federal Advisory Committee Act to provide recommendations to EPA regarding the GLRI and the Great Lakes Water Quality Agreement, a bilateral agreement between the U.S. and Canada. All 14 GLAB members have accepted their appointments and an announcement is anticipated in May.
- The 2018 Vessel Incidental Discharge Act (VIDA) includes a requirement that a Great Lakes and Lake Champlain Invasive Species Program be established within the EPA Great Lakes National Program Office (GLNPO). Program purposes include monitoring and assisting with actions that prevent or stop the establishment or spread of aquatic invasive and nuisance species within the Great Lakes and Lake Champlain systems. See separate Fact Sheet on VIDA for additional information on EPA activities to implement the statute.

### **KEY POINTS:**

- The FY 2020 Appropriation bill provided \$320 million for GLRI, a \$20 million increase over historic levels.
- The FY 2021 President's Budget requests \$320 million for GLRI to continue accelerating restoration and protection of this important ecosystem and help in also restoring the region's economic health.
- The \$20 million increase in the FY 2020 GLRI appropriation will address high priority Great Lakes issues including:
  - Fund Research & Development of Ballast Water Treatment Systems for cargo vessels that operate primarily, but not exclusively, within the Great Lakes (\$5 million)
  - Support for the Great Lakes Trash Free Waters Grant Program to keep trash out of the Great Lakes to provide healthy habitat for fish and wildlife (\$2 million)
  - Accelerate cleanup and restoration in Great Lakes Areas of Concern (AOC) to help meet the aggressive targets in the GLRI Action Plan III, which we announced this past fall (\$7.5 million)
  - Support Great Lakes states activities to reduce excess nutrient loads, restore habitat, and control and prevent invasive species (\$5 million)
  - Support EPA's Great Lakes National Program Office operations (\$500,000)
- In July 2019, Administrator Wheeler toured the EPA Research Vessel Lake Guardian in Cleveland, Ohio and announced a new GLRI grant program specifically focused on funding



projects consistent with EPA's "Trash Free Waters" initiative throughout the Great Lakes. Approximately \$2 million was available through the Great Lakes grant program to fund up to 12 trash-free projects. The deadline for applications was February 14, 2020. A total of 36 eligible applications were submitted for this Request for Applications (RFA) seeking a total of \$8.6 million in funding. The review panel is currently evaluating the applications, and we expect to announce our selections in the coming months.

- On March 3, 2020, Administrator Wheeler sent a letter to the Chairs of the Congressional Great Lakes Task Force outlining EPA's Co-Chair role and enhanced focus on and involvement in the Asian Carp Regional Coordinating Committee. The letter highlighted EPA's continued interest in targeting future GLRI funding towards Asian carp prevention and management activities.
- Congressional Interest:
  - The Senate and House Great Lakes Task Forces have been actively engaged in GLRI funding and associated programs, including invasive species.
  - On January 27, 2020, Sens. Duckworth, Braun, and Gillibrand signed onto a letter urging OMB and EPA to provide at least \$320 million for the GLRI in the FY 2021 President's budget request.
  - Rep. Joyce introduced the GLRI Act of 2019 (H.R.4031), that sought to reauthorize the GLRI for another five years and increase authorized funding for the program from \$300 million annually to \$475 million annually by FY2026. Cosponsored by Reps. Dingell, McCollum, Quigley, Johnson, and Lawrence.
  - The Senate companion bill, GLRI Act of 2019 (S.2295) was co-sponsored by Sens. Braun, Duckworth and Gillibrand.
  - In July 2019, Rep. McCollum and Appropriations Committee professional staff visited the St. Louis AOC area in Duluth, MN via an EPA-led tour aboard the USGS *Kiyi* research vessel. The tour consisted of AOC habitat restoration and dredging areas, brownfields sites, and the St. Louis River/Interlake/Duluth Tar State Superfund (SLRIDT) site.
  - House Appropriations Committee Minority staff have expressed interest in the status of EPA's mandated Report to Congress from VIDA on the Great Lakes and Lake Champlain Invasive Species Program and the Program Implementation Plan as requested in the FY 2020 appropriation explanatory statement.

### **TALKING POINTS:**

- EPA understands the importance of the Great Lakes and is committed to working with Congress as well as our federal and state partners to protect human health, support economic growth, and improve environmental conditions for Americans that live and work in the Great Lakes region.
- The FY 2021 President's budget requests \$320 million for GLRI, consistent with the funding Congress provided in FY 2020.
- Applications were due February 14, 2020 for a new GLRI grant program that will provide \$2 million for Trash Free Waters grants to support communities in cleaning up trash from beaches and waterways. EPA is currently reviewing those applications.
- To conserve GLRI dollars and encourage significant local involvement in and support for GLRI-funded projects, the President's FY 2021 budget calls for a 10% "cost-share" for GLRI grants issued directly by EPA. The cost-share requirement may be waived based on



demonstrated financial hardship.

- In the past few months, EPA has announced a series of significant grants and project agreements as part of our continued effort to accelerate the protection and restoration of the Great Lakes, including:
  - EPA announced a \$2.9 million Great Lakes project to clean up contaminated sediment in Detroit River, enabling expansion of the City of Detroit's Riverwalk.
  - EPA awarded over \$9 million in GLRI funding for projects to reduce excess nutrients in the Great Lakes.
  - EPA awarded \$6.4 million to Great Lakes Fishery Commission for projects to restore and manage fish species.
  - EPA announced a \$4.5 million sediment cleanup in the St. Louis River Area of Concern in Duluth, Minnesota.
  - EPA awarded over \$1.8 million for Innovative, Market-Based Nutrient Reduction Projects in Great Lakes Basin.



## HARMFUL ALGAL BLOOMS

### **BACKGROUND:**

- Cyanobacteria can form “blooms” in water bodies, known as harmful algal blooms (HABs), and can produce toxins (cyanotoxins) that are harmful to people, the environment, and animals.
- Several factors have been associated with the formation of HABs, including elevated levels of nutrients, warmer temperatures, still water, and plentiful sunlight.
- HABs are a growing health and economic concern throughout the United States. Cyanobacterial HABs were documented in surface waters of all 50 states between 2006 and 2015.
- In some communities, HABs in recreational waters have contributed to significant economic losses to the fishing and recreation industries.
- People can be exposed to cyanobacteria and their toxins through recreation, drinking water, food (including fish), and bathing and showering in cyanotoxin-contaminated water.
- EPA’s 2012 National Lakes Assessment (NLA) indicates that an excess of nutrients is common in U.S. lakes and is the most widespread stressor in the NLA; 40% of lakes have excessive levels of total phosphorus and 35% have excessive levels of total nitrogen.
- EPA is working with the Departments of Agriculture and Interior on predictive tools to better plan for and respond to HAB occurrences as well as on land management practices to reduce nonpoint sources of nutrients that contribute to HABs. These activities are on the list of priorities for the water sub-cabinet to ensure effective interagency investment and collaboration. See separate Fact Sheet on: Federal Water Officials (Water Sub Cabinet).
- To address the risks of HABs in drinking water, in June 2015, EPA released drinking water health advisories and recommendations for managing algal toxins in drinking water.
- The 2018 Farm Bill contains important new provisions to fund conservation programs to protect drinking water sources and offers incentives for farmers and public water systems to work together to protect their shared water resources.
- Under the provisions of Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA) of 2017, EPA has the authority to make a determination of a “HAB or hypoxia event of national significance (HHENS)” for freshwaters.
- In FY 2021, EPA is requesting \$15 million for a new competitive grant program to fund prevention and response efforts for HABs with significant health or economic risks as well as broader hypoxia and nutrient reduction efforts.
- This grant program would help states and tribes:
  - prioritize watersheds for efforts to prevent HABs and other harmful effects of excess nutrients;
  - set science-based goals for nutrient reduction efforts;
  - identify and adopt state-level actions and programs to better support nutrient reductions;
  - deploy staff to plan, prioritize, engage partners and stakeholders;
  - monitor nutrients and harmful algal blooms to assess progress;
  - report and communicate results to the public; and
  - develop or implement a water quality trading or other market-based program.



## **KEY POINTS:**

- On September 6, 2019, EPA published a Federal Register notice requesting public comment to inform the development of an Agency policy for determining if a HAB or hypoxia event in freshwater is an “event of national significance.”
  - Recent amendments to the Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA) provide EPA with the statutory authority to make such a determination in the case of a freshwater HAB or hypoxia event. Such a determination would enable mobilization of federal resources to assess and mitigate its detrimental effects, subject to appropriations.
  - EPA will develop a draft policy using public input received in response to this notice and in coordination with NOAA, which has the statutory authority to make determinations of national significance for HAB or hypoxia events in marine and coastal waters.
- On June 6, 2019, EPA issued final recommended concentrations of two cyanotoxins (microcystins and cylindrospermopsin) in recreational waters at or below which human health is protected while swimming or participating in other activities in or on the water.
  - States, territories, and authorized tribes can consider adopting EPA’s final recommended criteria into their water quality standards and using them for Clean Water Act purposes. Alternatively, they can use these same values as the basis of swimming advisories for public notification purposes at recreational waters.
  - EPA also published an infographic about HABs that highlights how a bloom may affect both people and animals and helps the public identify a potential bloom and stay safe.
  - In December 2019, EPA released a draft technical support document to help states implement these new recommended criteria. EPA accepted public comments on the document until February 14, 2020. EPA is in the process of revising the document to address comments the Agency received.
- In 2017, EPA posted information for monitoring and responding to cyanobacteria and cyanotoxins in recreational waters that included communications materials and tools for waterbody managers. These materials were developed to support the use of recreational advisories related to cyanobacterial blooms and elevated cyanotoxin concentrations in freshwater.
- Conventional drinking water treatment can generally remove cyanobacteria and low levels of cyanotoxins from source waters. However, during a severe bloom event, public water systems may face challenges providing quality drinking water, raising the potential for serious health concerns.
- Significant drinking water cyanotoxin-related emergencies include events in Detroit Lake, Oregon that caused a drinking water emergency in the City of Salem (May 2018), and in Lake Erie that caused a drinking water emergency in the City of Toledo (August 2014).
  - EPA provided Salem, Oregon with technical support on treatment, monitoring and risk communication strategies, as well as direct monitoring and laboratory analysis support.
- EPA released in November 2015, the “Algal Toxin Risk Assessment and Management Strategic Plan for Drinking Water,” EPA’s roadmap for decreasing cyanotoxin risks in drinking water. EPA has taken/is taking the following actions in accordance with the Strategic Plan:



- EPA continues to conduct research to identify approaches to reduce nutrient pollution that often fuels HABs.
- In November 2016 and July 2018, EPA released support tools and an overview video of those tools to assist states, tribes and drinking water systems in managing cyanotoxins in drinking water.
- In November 2019, the Agency completed sampling for an exploratory study of the impacts of harmful algal blooms on the formation of disinfection byproducts in selected drinking water systems in Ohio, California and New York. EPA issued utility-specific reports to partner utilities.
- EPA is currently collecting cyanotoxins occurrence information from public water systems through the fourth Unregulated Contaminant Monitoring Rule (UCMR) program.
- Since 2015, EPA has hosted one to three regional workshops per year focused on strategies to protect drinking water sources from HAB risks. The latest workshop was held in Overland Park, Kansas in early February 2020 and included the participation of seventeen heartland and Great Lakes states, two Regional Administrators, numerous technical experts and Administrator Wheeler participated via a recorded video with opening remarks.

#### **TALKING POINTS:**

- In FY 2021, EPA is requesting \$15 million for a new competitive grant program to fund prevention and response efforts for harmful algal blooms (HABs) and nutrient reduction efforts.
- EPA has provided considerable technical and laboratory support to states and communities during drinking water emergencies caused by HABs.
- EPA has developed drinking water health advisories and, in coordination with federal agency partners, multiple tools to help states, local governments and public water systems predict and manage algal blooms and communicate about their risks.
- Additionally, EPA is working with our state and federal partners, the agricultural community, and other key stakeholders to improve and protect sources of drinking water from conditions that lead to HABs, including developing effective approaches to reduce excess nutrients in source waters.
- EPA continues to develop an Agency policy for determining if a HAB or hypoxia event in freshwater is an “event of national significance.” Subject to appropriations, the Agency would make such a determination to enable mobilization of federal resources to assess and mitigate detrimental effects of the freshwater HAB or hypoxia event.
- In June 2019, EPA issued our final recommended safe levels of two cyanotoxins in recreational water bodies, and states and tribes may use these recommended concentrations to help protect people recreating in, on, and around the water.
- EPA, Department of Agriculture, and many state and local partners are working to reduce nonpoint and other sources of excess nutrients in waterways that can contribute to HABs.



## CITY OF COMPTON DISCOLORED WATER ISSUE

### **BACKGROUND:**

- The Sativa Water District (Water District) serves 6800 residents in the Cities of Compton and Willowbrook in Los Angeles County.
- This system is currently being operated by Los Angeles County where numerous customers of Sativa have observed brown water coming out of their faucets.
- EPA Region 9 and the State of California investigated and concurred in the conclusion of LA County that testing has not found any current health-based violations or any Lead and Copper Rule (LCR) action level exceedances.
- However, the system has a significant number of monitoring and reporting violations. These violations include Total Coliform Rule monitoring and reporting (MR) violation in 2015, MR violations for Stage 2 Disinfectants and Disinfection Byproducts Rule in January 2017 and Revised Total Coliform Rule reporting violation in February 2017.
- In addition to those reporting violations, there have been secondary violations related to the discoloration of the water and the presence of manganese.
- The Water District utilizes wells with elevated levels of naturally occurring manganese but lacked the technical capability to properly operate and maintain the water system to address the discolored water through appropriate treatment and flushing.
- The Sativa system has been cited by State public safety regulators for not providing adequate water pressure required for firefighting.
- On October 31, 2018, the CA State Water Resources Control Board invoked its authority under a newly enacted State law (referred to as “AB 1577”) to remove the Water District Board of Directors, and it appointed the Los Angeles County Department of Public Works (LADPW) as Administrator of the water system.
- In July 2019, an inter-tie with Liberty Utilities-Compton Water System allowed LADPW to temporarily remove wells with elevated manganese from the Sativa water system.
- LADPW is in the process of constructing a manganese treatment facility for wellhead treatment.
- LA County’s role as Administrator will end when the Sativa Water District is sold to a permanent water service provider. LADPW awaits LA County Board of Supervisors approval for the sale of the Sativa water system to Suburban Water Systems, which will also require CPUC approval.
- Questions were also raised about the Compton City Water Department which serves 78,000 people. While the system currently has no health-based violations or Lead and Copper Rule action level exceedances, they have had monitoring and reporting violations for Stage 2 Disinfectants and Disinfection Byproducts Rule in October 2012; an LCR MR violation for follow up/routing tap monitoring in Jan 2006; and a Total Coliform Rule MR violation from May 2004.
- Congressional interest: In April 2018, Representative Nanette Diaz Barragan (D-44) raised concerns about discolored water being served to residents in the communities of Compton and Willowbrook by the Sativa Water District.



**KEY POINTS:**

- LADPW currently serves as the appointed Administrator for operation and maintenance of the troubled Sativa Water District.
- LADPW has received DWSRF funding to undertake numerous water system infrastructure improvements and the planning and design for installation of manganese treatment, which is projected to be online in Fall 2020.
- A comprehensive on-site sanitary survey of the system was conducted by the State Water Board in December 2019 with no major deficiencies noted.

**TALKING POINTS:**

- LADPW has made urgent infrastructure repairs to address water quality concerns for residents of Compton and Willowbrook.
- Since takeover by LADPW in November 2018, water quality has improved and there have been few complaints of discolored water.



## **ASSISTING COMMUNITIES WITH CLEAN WATER INVESTMENTS THROUGH IMPLEMENTATION OF INTEGRATED PLANNING AND THE “WATER INFRASTRUCTURE IMPROVEMENT ACT”**

### **BACKGROUND:**

- Integrated planning is a tool used to help municipalities meet their Clean Water Act (CWA) obligations while optimizing their infrastructure investments through the appropriate sequencing of work.
- This legislation was signed into law January 14, 2019 and amends the CWA to recognize integrated planning as a permissible approach to concurrently address municipal stormwater and wastewater obligations (building off EPA’s 2012 “Integrated Planning Framework”).
- The legislation requires EPA to provide outreach and technical assistance to communities to help them develop integrated plans and defines integrated plans and green infrastructure.
- It also requires EPA to provide a report to Congress in January 2021 on integrated plans that have been developed.
- The Act codifies in law that integrated plans can be incorporated into National Pollutant Discharge Elimination System (NPDES) permits and, when appropriate, a schedule of compliance can exceed one permit term when authorized by state water quality standards.
- The Act also allows integrated plans to be part of an Administrative Order or Consent Decree and provides that municipalities with an existing order or decree may request a modification.
- The Act requires EPA to establish the Office of the Municipal Ombudsman to:
  - help municipalities interested in integrated planning;
  - provide the Administrator with information to ensure uniform application of policies; and
  - identify financial assistance, permitting and enforcement flexibilities, and examples of existing integrated plans to use as models.
- The legislation directs EPA to coordinate efforts to increase the use of green infrastructure across federal, state, and local government as well as the private sector, and directs the Agency to provide coordinated outreach, training, technical assistance, and information sharing on green infrastructure.

### **KEY POINTS:**

- EPA announced its first Municipal Ombudsman on March 16, 2020.
- EPA hosted a national webcast on integrated planning in January 2020 with over 520 attendees.
- OECA and DOJ have become much more proactive and flexible in considering integrated planning in enforcement activities and in revisiting prior settlements when requested.

### **TALKING POINTS:**

- Municipalities have multiple wastewater and stormwater obligations under the Clean Water Act.
- Integrated planning provides technical assistance to municipalities to help meet their Clean Water Act obligations while considering affordability factors through the appropriate prioritization of upgrades and improvements.
- EPA’s integrated planning program will provide technical assistance tools like the Water Finance Clearinghouse and models so municipalities have a “one stop shop” to help with water infrastructure improvements and to meet CWA obligations.
- EPA’s first Municipal Ombudsman started in March and will serve as an important resource to communities complying with the Clean Water Act.



## **STREAMLINING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING**

### **Background:**

- The Federal Water Pollution Control Act Amendments in 1972 established the core NPDES program. All discharges of pollutants from point sources to waters of the U.S. require an NPDES permit. The permit term cannot exceed 5 years (statutory).
- States/tribes can apply to administer the NPDES permitting program by demonstrating to EPA that the state or tribe has adequate legal, technical, and financial capabilities. Currently, forty-seven states have authorized programs for some or all of the Clean Water Act NPDES programs.
- Permitting authorities can provide permit coverage to point sources in one of two ways: 1) an individual permit which is a unique permit for each discharger, or 2) a general permit that provides coverage to a large number of similar dischargers. Approximately 94 percent of the permitted universe is covered under a general permit.

### **Key Points:**

- As part of EPA's strategic plan, EPA is modernizing its permitting practices to increase the timeliness of reviews and decisions, while working more collaboratively, and transparently, to achieve the Agency's mission.
- At the end of December 2019, approximately 360 existing and 26 new EPA-issued individual NPDES permits were backlogged, down from the FY 2018 high points of 547 and 106, respectively.
- Factors that contribute to delays in the permit issuance process include inefficient internal agency review processes, incomplete permit applications, increasing complexity of developing water quality-based requirements, permit appeals and litigation, Endangered Species Act (ESA) consultations, and delays in receiving state water quality (401) certifications.
- EPA's efforts to reduce the backlog of permits largely focuses on streamlining of internal and external processes, improving permit applications, providing guidance to permittees, building and maintaining staff capacity, improving information flow, and providing additional technical support.

### **Talking Points:**

- EPA is working diligently with the regional and state permit writers to identify challenges that have led to permit delays and sharing strategies and best practices to facilitate the permitting process.
- In addition, EPA is developing trainings and workshops that facilitate networking among peers and access to national experts.



## ADDRESSING NUTRIENT POLLUTION WITH PARTNERS

### **BACKGROUND:**

- Nutrient pollution is a wide-ranging challenge affecting water quality across the country. EPA's latest national water quality survey results indicate that more than 43% of rivers and streams and 35 percent of lakes are in poor condition due to excess nutrients. The adverse impacts of nutrient pollution are substantial, ranging from aquatic life to human health and economic concerns.
- EPA provides technical and programmatic support on nutrient pollution, including: impacts on drinking water; control strategy development and implementation; numeric nutrient criteria derivation; monitoring and assessment; nonpoint source programs and funding; and national pollutant discharge elimination system (NPDES) permits.
- Key opportunities include implementing watershed-based, collaborative approaches that focus on reductions from nonpoint sources, ensuring point source controls are applied appropriately, and promoting market-based approaches, innovative technologies, and adaptive management.
- In December 2018, EPA and USDA issued a letter to state co-regulators inviting engagement as a way to reinvigorate state, tribal, and federal efforts to reduce excess nutrients in waterways, with a focus on market-based and other collaborative approaches.
- In February 2019, EPA signed a Memorandum of Understanding with the Water Research Foundation to develop affordable technologies to recycle nutrients from livestock manure. EPA also issued a new water quality trading policy memorandum intended to promote nutrient reductions and water quality improvements at a lower cost using market-based mechanisms.
- In Summer 2019, EPA and USDA co-hosted a webinar series on innovative financing in the public and private sectors that can be used to help reduce excess nutrients. The webinar series featured case studies of successful approaches from across the country. The series culminated in the National Nutrient Finance Forum on August 14, 2019 in Washington, D.C. to further explore the topic and encourage creative problem solving.
- In August 2019, EPA announced the award of more than \$7.5 million in Farmer to Farmer Cooperative Agreements to fund projects that promote innovative, market-based solutions for improving water quality, while also maintaining a vital agricultural economy. EPA also announced the award of \$1.2 million to 12 states as part of the Hypoxia Task Force to help these states reduce excess nutrients in the Mississippi River/Atchafalaya River Basin.
- In September 2019, EPA issued a federal register notice seeking public comment on policy options related to one of the six principles in the February 2019 water quality trading policy memorandum, specifically encouraging simplicity and flexibility in implementing baseline concepts.
- On October 22, 2019, EPA launched the first phase of a national study of nutrient removal technologies at wastewater treatment plants to collect basic information on the type of treatment in place at treatment facilities nationwide. The results of this study will provide information on technology optimization practices available to reduce nutrients in discharges without having to implement costly advanced treatment upgrades. All the data collected during this study will be made public to encourage knowledge sharing amongst the wastewater treatment community. EPA estimates there are 18,000 facilities across the country and we currently have about 1,300 responses representing 49 of 50 states. We are working to increase the response rate to better define the full population of wastewater treatment plants in the U.S. and their treatment characteristics.
- See additional Fact Sheets on: HABs Drinking Water, HAB Recreational Waters, Water Quality Trading.



**KEY POINTS:**

- To better address the excess nutrient challenge, EPA is identifying opportunities for meaningful reductions in nonpoint nutrient losses and improvements in water quality. These opportunities will require all the tools available to address excess nutrients in watersheds, including non-regulatory and market-based programs.
- EPA is committed to working with partners (USDA, industry stakeholders, states, and tribes) to improve water quality while improving the efficiency of land use practices and optimizing treatment technologies.
- EPA is engaging with states and stakeholders and we are working to facilitate market-based efforts to reduce nutrient inputs into watersheds, and facilitate information sharing and education regarding financing opportunities for nonpoint management strategies.
- EPA recognizes that making progress in excess nutrient reduction goals depends largely on the efforts of state, tribal, and local programs working in partnership with stakeholders.

**TALKING POINTS:**

- Nutrient pollution is a serious challenge affecting water quality across the country.
- Thanks to the hard work of states, tribes, and stakeholders, we have made great strides in reducing excess nutrients in some watersheds. We have and will continue to support our partners, including states, tribes, and farmers, to address excess nutrients in watersheds using regulatory, non-regulatory, market-based, and other collaborative approaches.
- The EPA strongly supports the use of water quality trading and market-based mechanisms to improve water quality, often at a lower cost than traditional regulatory approaches.



## STUDY OF OIL AND GAS EXTRACTION WASTEWATER

### **BACKGROUND:**

- Large volumes of wastewater – or produced water – are generated in the oil and gas industry, and projections show these volumes could increase significantly over the next several years.
- Typically, produced water is managed by disposing of it using a practice known as underground injection, where the wastewater can no longer be accessed or used.
- Underground injection has limitations in some parts of the U.S. and new approaches to managing produced water are becoming necessary.
- Some states and stakeholders are asking whether it makes sense to continue to remove this water from the water-cycle, particularly in water-scarce areas of the country, and what steps would be necessary to treat and reuse or renew it for other purposes.

### **KEY POINTS:**

- Finding ways to reuse produced water are discussed in the *Water Reuse Action Plan*. See additional Fact Sheet on water reuse.
- In early 2018, EPA embarked on a study of how states, tribes, and other stakeholders manage wastewater from on-shore oil and gas extraction operations.
- The study addresses questions such as:
  - How can existing federal approaches interact more effectively with state and tribal regulations?
  - What requirements or policy updates might be needed to facilitate use of produced water?
- The study does not announce or discuss any regulatory efforts regarding oil and gas extraction wastewater.
  - The information in study will help EPA determine if any future actions are appropriate to further address the use of oil and gas extraction wastewater.

### **TALKING POINTS:**

- In May 2018, EPA announced the initiation of a holistic study looking at how the Agency, states, and stakeholders regulate and manage wastewater from the oil and gas industry.
- The study was designed to help EPA better understand how existing federal approaches can interact more effectively with state and tribal regulations, and what requirements or policy updates might be needed to facilitate the beneficial use of produced water. EPA published the draft study in May 2019 and accepted public input through July 1, 2019. EPA anticipates finalizing the study and announcing any next steps in 2020.



## **FINANCIAL SUPPORT FOR SMALL DRINKING WATER SYSTEMS**

### **BACKGROUND:**

- 91% of the 50,000 community water systems are small (serving <10,000 persons).
- These systems often have challenges with financing infrastructure updates or repairs as well as funding basic operations due to their small rate base.
- The EPA provides financial support to small systems through technical assistance grants, Water Infrastructure Improvements for the Nation (WIIN) grants, America's Water Infrastructure Act (AWIA) grants, as well as the Drinking Water State Revolving Fund (DWSRF).
  - EPA's DWSRF provides no- and low-cost financing to communities for water infrastructure projects. States have provided over \$14 billion to small systems since 1997.
  - The DWSRF set-asides provide critical funding for direct, onsite technical assistance. States may set aside up to approximately 31% of their DWSRF capitalization grant to fund state programs and third parties, including funding circuit riders, and to provide assistance and build the capacity of drinking water systems, including those in small and rural communities. In fiscal year 2018, the DWSRF set-asides provided \$177 million to states nationally with \$12.9 million directed specifically toward technical assistance to small systems.

### **KEY POINTS:**

- From FY 2012 through FY 2018, Congress appropriated \$12.7 million each year to support small system technical assistance that must be awarded through national competitive grants. EPA has awarded those funds to the National Rural Water Association, the Rural Community Assistance Partnership, and the Environmental Finance Center Network. In FY 2019 Congress appropriated \$15 million for these grants which is scheduled to be awarded in February 2020.
- In March 2020, EPA announced the recipients of the FY 2019 funding. The recipients are the Rural Community Assistance Partnership (\$10.7 million) and the National Rural Water Association (\$4.3 million).
- Congress provided \$17.7 million in grant funding for FY 2020. The allocations are:
  - \$15 million for training and technical assistance to drinking water systems;
  - \$1 million for training and technical assistance to wastewater systems; and
  - \$1.7 million for training and technical assistance to private well owners.
- The FY 2021 President's Budget does not request funding for this technical assistance grant.
- The 2021 President's budget includes \$48 million to support small drinking water communities through the following provisions of WIIN and AWIA:
  - \$20 million for the Reduction of Lead in Drinking Water Grant;
  - \$2.0 million for the Drinking Water Infrastructure Resilience and Sustainability Grant;
  - \$10 million for the Drinking Fountain Lead Testing and Replacement Grant;
  - \$15 million to support the WIIN Lead in Schools grant; and
  - \$1 million for the Water Infrastructure and Workforce Investment Grant.

### **TALKING POINTS:**

- EPA recognizes the importance of small systems in providing safe drinking water to rural and urban areas across the country and is committed to ensuring that the communities with the greatest need have access to infrastructure improvements as well as training and technical assistance to protect public health.
- Funding requested for the DWSRF and the WIIN and AWIA grants in 2021 reflect this Administration's continued financial support and commitment to critical small system infrastructure improvements and public health protection in schools and communities.



## **STEAM ELECTRIC POWER GENERATING EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS (ELGs)**

### **BACKGROUND:**

- The Steam Electric Effluent Limitation Guidelines (ELGs) are applicable to discharges from approximately 1,080 fossil- and nuclear-fueled steam electric generating units.
- Toxic pollutants discharged by power plants may include arsenic, mercury, lead, boron, cadmium, selenium, chromium, nickel, thallium, vanadium, zinc, and others. These pollutants may pose risks to human health, fish, and wildlife.
- On November 3, 2015, EPA issued a final rule amending the ELGs on various waste streams at steam electric power plants. The 2015 ELGs established new requirements for discharges of wastewater that is produced by flue gas desulfurization (FGD), fly ash and bottom ash, flue gas mercury control systems, and the gasification of fuels such as coal and petroleum coke. Under the 2015 ELG final rule, new requirements for existing power plants would be phased in between 2018 and 2023.
- In 2017, EPA received two administrative petitions for reconsideration of the 2015 ELG rule, one from the Utility Water Act Group and one from the Small Business Administration Office of Advocacy.
- Petitioners raised numerous concerns, such as:
  - The 2015 rule does not account for true costs;
  - The 2015 rule fails to consider the cumulative impacts of this rule and other rules to the affected industries; and
  - EPA did not gather data on certain types of plants covered by the rule and used obsolete or unreliable data in its analysis supporting other aspects of the rule.
- The Fifth Circuit issued a decision in *Southwestern Electric Power Co., et al. v. EPA* on April 12, 2019, vacating the 2015 limitations for leachate and legacy wastewater as arbitrary and capricious under the Administrative Procedure Act and unlawful under the Clean Water Act, respectively. These waste streams are not part of EPA's reconsideration rulemaking.
- EPA plans to address this vacatur in a subsequent action.

### **KEY POINTS:**

- After considering the issues raised in two petitions for reconsideration, on August 11, 2017, the Agency began a rulemaking process to potentially revise the FGD wastewater and bottom ash transport water portions of the 2015 ELG rule.
- Separately, a final rule was signed on September 9, 2017, postponing the earliest compliance dates in the 2015 ELG rule for FGD wastewater and bottom ash transport water, from November 1, 2018 to November 1, 2020. This rulemaking was upheld by the Fifth Circuit Court of Appeals.
- On November 22, 2019, EPA published a proposed rule that modifies the 2015 rule for FGD wastewater and bottom ash transport water. If finalized, the proposed rule will reduce compliance costs to industry, saving approximately \$175 million annually, while also further reducing pollutant discharges as compared to the 2015 rule by approximately 100 million pounds. EPA accepted public comments on the proposed rule through January 21, 2020, and is currently reviewing the public comments.

### **TALKING POINTS:**

- EPA published a proposed rule in November 2019 that modifies the 2015 rule for FGD wastewater and bottom ash transport water and we accepted public comments through January 21, 2020. We are currently reviewing the comments received.
- The proposed rule will reduce 100 million more pounds of pollution per year compared to the 2015 rule and reduce compliance costs to industry, saving approximately \$175 million annually.
- EPA previously issued a rule to delay the compliance dates for the 2015 rule until 2020 to prevent power plants from unnecessarily spending resources until our reconsideration rule is complete.



## TRASH FREE WATERS

### **BACKGROUND:**

- A large majority of the trash in water comes from land-based sources, with an estimated 60% from five countries in Asia. Trash that is improperly disposed of on land or into water can have environmental and economic impacts on states and communities throughout the U.S.
- Aquatic trash issues include:
  - Decrease of aesthetic, recreational, and economic values of rivers, beaches, and marine resources;
  - Animal entanglement or ingestion, sometimes resulting in the death of dolphins, whales, turtles, sea birds, and more;
  - Pollutant and virus transport;
  - Habitat destruction; and
  - More taxpayer dollars spent on clean up.
- EPA's Trash Free Waters Program is voluntary and works in partnership with other federal, state, and private stakeholders to reduce and prevent trash from entering U.S. waters and the ocean.
  - EPA supports and brings together state and local governments, businesses, and concerned citizens to help identify collective actions in communities that enhance trash capture and prevention.
  - EPA creates tools to aid in developing litter prevention actions. The Agency supports a range of research efforts to assess the impacts of trash on water quality, aquatic habitat, and public health.
  - EPA uses community-based prevention approaches to help facilitate trash pollution prevention programs in other countries.
  - EPA builds partnerships to stimulate innovative approaches for packaging technology, litter prevention, and material reuse.
- On September 24, 2019, EPA announced the availability of \$5 million in grant funding for innovative projects focused on reducing the amount of trash in our waterways through trash prevention and/or removal in the Gulf of Mexico. That amount was later augmented to almost \$8 million. Final awards will be made soon.
- On December 16, 2019, EPA announced it is seeking applications under a newly developed Great Lakes Restoration Initiative (GLRI) grant program focused on the Great Lakes. Approximately \$2 million was made available through the Trash-Free Great Lakes program to fund up to 13 projects, and proposals are now being considered. In April, this amount was augmented by an additional \$2 million. Plans for distributing the additional \$2 million are still being finalized.

### **KEY POINTS:**

- EPA is working with NOAA and the Coast Guard to implement the recently passed "Save our Seas" legislation from last year and provided technical assistance to Congress on "Save our Seas" 2.0 that recently passed the Senate. Science Committee member Bonamici (D-OR-1) is the main sponsor of SOS 2.0 in the House (H.R. 3969).
- The FY 2021 budget request includes an initiative titled, "Reducing Ocean Pollution and Plastic" – which provided for an increase of \$4,680,000 and 3 FTE above FY 20 baseline levels to address the ocean plastics and pollution issue.
  - This request will provide support to states and municipalities in coastal regions and on major river systems. If funded, work will focus on high impact activities, such as expanding trash prevention, source reduction, and monitoring programs. Examples include installing trash capture technologies in-stream and as part of stormwater conveyance systems, and developing strategies to guide local trash mitigation efforts.



## **TALKING POINTS:**

- Aquatic trash is a significant environmental issue that has substantial economic and environmental consequences. EPA engages in both domestic and international partnerships to support trash pollution prevention programs, recycling efforts in rural and suburban communities, and waterfront revitalization.
- The FY 2021 budget request includes additional funding for an initiative called “Reducing Ocean Pollution and Plastic” to help combat ocean pollution and plastics.
- Since 2013, the Trash Free Waters Program has provided financial assistance to over **50 domestic projects**. Internationally, EPA has engaged in pilot Trash Free Waters projects with Peru, Panama, Jamaica, Mexico, Canada, and China.



## **U.S. MEXICO BORDER INFRASTRUCTURE PROGRAM**

### **BACKGROUND:**

- The U.S.–Mexico Border grant program assists border communities in the planning, design, and construction of water and wastewater treatment projects.
- The FY 2021 President’s Budget proposes elimination of the U.S.–Mexico Border grant program.
- The USMCA implementing legislation includes 300M, in addition to the \$25M from EPA’s FY 2020 appropriation, to fund water infrastructure improvements along the U.S. Mexico border through EPA’s Border Water Infrastructure Program (BWIP). The BWIP works with the North American Development Bank to fund water infrastructure projects. The U.S. Treasury will receive \$225M for the North American Development Bank for the U.S. share of the increase in capital stock. EPA is working with Treasury to see if some of the \$225 could also be used for water infrastructure improvements along the border.

### **KEY POINTS:**

- Between January and May 2017 three major spills occurred in the Tijuana area resulting in more than 150 million of gallons of untreated sewage flowing into the U.S. These events caused beach closures, impacted local communities, and exposed U.S. Customs and Border Protection (CBP) agents to numerous pathogens as well as unknown chemicals.
- Members of Congress, CBP, the States of Arizona and California, and local cities have expressed their concerns regarding the increased number of transboundary spills due to failing infrastructure in Mexico. Arizona, Imperial Beach and Chula Vista, CA, and the San Diego Unified Port District have all filed lawsuits against the International Boundary and Water Commission (IBWC) associated with the spills.
- The FY 2018, FY 2019, and FY 2020 President’s Budgets also requested elimination of funding. The FY 2020 Appropriation bill provided \$25 million, a \$10 million increase from the FY 2019 Enacted level.
- The U.S.–Mexico Border Water Infrastructure grant program is currently the only U.S. Government grant program that funds water and wastewater infrastructure on the Mexico side of the border; projects funded on the Mexico side of the border must benefit the United States and must have matching funds from Mexico. Funds for projects on the Mexico-side of the border are awarded to the North American Development Bank (NADB) by the Regions and NADB manages the projects.
- Senate Appropriations Committee Chairman Shelby has asked EPA to explain how it plans to implement the Mexico Border provisions of USMCA.

### **TALKING POINTS:**

- The recently passed USMCA included \$300 million for the U.S.–Mexico Border water infrastructure grant program. EPA is currently working on a plan for distributing the funds and will engage with our federal, state, and local partners in the near future to help develop that plan.
- The USMCA also includes \$225M for Treasury to go to the North American Development Bank. EPA is working with Treasury to see if some of the \$225 could also be used for water infrastructure improvements along the border.
- These funds will help provide a lasting solution to critical cross-border infrastructure needs and will promote a return to the State Revolving Funds and WIFIA as the primary infrastructure investment vehicles for U.S communities along the border.



## **VESSEL INCIDENTAL DISCHARGE ACT (VIDA)**

### **BACKGROUND:**

- In response to a U.S. district court decision that was upheld by the Ninth Circuit, in late 2008, EPA began regulating incidental discharges from non-recreational, non-armed forces vessels through the CWA NPDES permitting program.
- EPA issued the first NPDES Vessel General Permit (VGP) in December 2008.
- Several subsequently enacted laws affected the applicability of that court decision, including legislation passed to exclude incidental discharges from recreational vessels and from small and commercial fishing vessels (except for ballast water discharges) from NPDES permitting.
- VIDA was signed into law on December 4, 2018, establishing a single federal regulatory framework. VIDA authorizes the EPA to develop discharge standards within two years and the United States Coast Guard (USCG) to develop corresponding implementing regulations. Currently, both domestic and international vessels operating in U.S. waters are subject to a patchwork of federal and state vessel discharge regulations.
- VIDA also includes a requirement that a Great Lakes and Lake Champlain Invasive Species Program be established within the Great Lakes National Program Office (GLNPO). Program purposes include monitoring and assisting with actions that prevent or stop the establishment or spread of aquatic invasive and nuisance species within the Great Lakes and Lake Champlain systems. VIDA required EPA to issue a report to Congress on this program (was due December 2019) and the FY 2020 appropriation requested a Program Implementation Plan be provided to the Appropriations Committee (due March 2020). Both the report to Congress and the Program Implementation Plan are close to completion.
- Finding solutions to the adverse impacts from untreated ballast water (i.e., invasive species) is a significant international and domestic issue.

### **KEY POINTS:**

- VIDA requires the EPA to promulgate regulations establishing discharge standards by December 2020 and requires the USCG to establish implementation, compliance, and enforcement provisions two years thereafter (by December 2022).
- VIDA requirements will apply to all incidental discharges from commercial vessels (non-recreational and non-military) greater than 79 feet in length and to ballast water discharges from small vessels less than 79 feet and fishing vessels of any size.
- Effective as of VIDA's enactment, incidental discharges, except for ballast water, from small vessels and fishing vessels are exempt from regulation under CWA Section 402 and future regulation under VIDA, although discharges must meet the 2013 EPA VGP requirements and existing USCG ballast water regulations until the new VIDA regulations are in force.
- The EPA's proposed rule is scheduled to be published in the summer of 2020; the final rule is scheduled to be published in December 2020 to meet the statutory deadline.
- VIDA requires that states will be pre-empted from enforcing more stringent standards for these discharges once the EPA and the USCG regulations are final, effective, and enforceable. However, VIDA includes a number of provisions for the EPA and the USCG to engage states throughout and after the rulemaking process, including consultation requirements, petitions, and applications for more stringent standards and no-discharge zones.



**TALKING POINTS:**

- VIDA requires the EPA and the USCG to work cooperatively to develop national vessel discharge standards and implementing regulations to prevent and control pollution from commercial vessel discharges.
- The EPA's proposed rule is scheduled to be published this summer and the final rule is scheduled to be published in December 2020.
- Per VIDA, EPA is establishing a Great Lakes and Lake Champlain Invasive Species Program within the Great Lakes National Program Office. The purpose of the Program is to monitor and assist with actions that prevent or stop the establishment or spread of aquatic invasive and nuisance species within the Great Lakes and Lake Champlain systems.



## WATER INFRASTRUCTURE (SRFs/WIFIA/AWIA): KEY HIGHLIGHTS AND STATS

### **BACKGROUND:**

- Established in 1988 and 1997 respectively, the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs are comprised of 102 environmental finance banks administered by the states and Puerto Rico and provide low-cost financial assistance to help communities address water infrastructure needs.
  - With more than 30 years of federal capitalization grants and state match contributions, approximately \$80 Billion has been invested into these programs. The \$80 billion includes the following: DWSRF federal cap grants: \$21.1 billion, DWSRF state match: \$4.1 billion, CWSRF federal cap grants: \$45.2 billion, CWSRF state match: \$8.9 billion.
- Infrastructure needs are collected through the Needs Surveys that have been completed approximately every four years. The last Clean Watersheds Needs Survey, containing 2012 data shows an infrastructure need of \$271 billion over the next 20 years, was reported to Congress in 2016. The last Drinking Water Needs Survey, containing 2015 data shows an infrastructure need of \$472.6 billion over the next 20 years, was reported to Congress in 2018.
- Established by the Water Infrastructure Finance and Innovation Act (WIFIA) in 2014, the WIFIA program is a federal loan and guarantee program that aims to accelerate investment in the nation's water infrastructure by providing long-term, low-cost, supplemental credit assistance for regionally and nationally significant projects.
  - The FY 2021 President's Budget requests \$25 million for the WIFIA program. The EPA could potentially provide \$2 billion in credit assistance, which could spur an estimated \$4 billion in total water infrastructure investment at that appropriated level. Congress appropriated \$60 million for WIFIA in FY 2020.
- In October 2018, the President signed America's Water Infrastructure Act (AWIA), which amends the Safe Drinking Water Act, the Clean Water Act, and the Water Infrastructure Improvement for the Nation Act (WIIN), authorizes or revises 32 different EPA water efforts, including a number of EPA's water infrastructure programs.
- In 2019 and 2020, Congress funded the CWSRF at \$1.69B and the DWSRF at \$1.13B.

### **KEY POINTS:**

- Every federal dollar contributed to the SRFs translates into nearly three dollars in total infrastructure investment in communities.
- The table below shows a comparison between the President's FY 2021 request and FY 2020.

**RESOURCES (Dollars in Millions):**

Approp.	FY20 Enacted	FY21 President's Budget	Delta FY20 EN v. FY21 Pres Bud
CWSRF	\$1,638.8	\$1,119.8	-\$519.0
DWSRF	\$1,126.1	\$863.2	-\$262.9
<b>Total</b>	<b>\$2,764.9</b>	<b>\$1,983.0</b>	<b>-\$781.9</b>

- WIFIA:** The WIFIA program, as of May 7, 2020, has issued 20 WIFIA loans totaling \$4.2 billion in credit assistance to help finance more than \$9.4 billion for water infrastructure projects while creating more than 19,000 jobs.
- AWIA:** Infrastructure-related provisions range from the creation of grant programs, authorizing assistance to areas affected by natural disasters, promoting water utility workforce development, and improving community water system risk and resilience.



- The FY 2021 President's budget requests funding for the following AWIA and WIIN programs:
  - \$2.0M for the Drinking Water Infrastructure Resilience and Sustainability Grant Program;
  - \$20 million for the Reduction of Lead in Drinking Water Grant Program;
  - \$10 million for the Drinking Fountain Lead Testing and Replacement Grant Program;
  - \$15 million to support the WIIN Lead in Schools grant
  - \$7.5M for the Technical Assistance to Treatment Works Grant Program;
  - \$61.45M for the Sewer Overflow Control Grants; and,
  - \$1.0 M for the Water Infrastructure and Workforce Investment Grant Program.

**TALKING POINTS:**

- The Administration strongly supports improving and modernizing the nation's water infrastructure.
- For example, to date, the WIFIA program has issued 20 WIFIA loans totaling more than \$4.2 billion in credit assistance to help finance more than \$9 billion for water infrastructure projects while creating more than 19,000 jobs.
- The FY 2021 President's Budget request supports a significant national investment requesting funding for major infrastructure programs, including:
  - nearly \$2.0 billion in funding for the State Revolving Funds.
  - \$25 million for the WIFIA program that could potentially provide \$2 billion in credit assistance, which could spur an estimated \$4 billion in total water infrastructure investment.
  - \$117 million for AWIA and WIIN Programs that support water infrastructure.
- With more than 30 years of federal capitalization grants and state match contributions, approximately \$80 Billion has been invested into these programs by the federal government and the states resulting in over 41 thousand water quality projects and over 15 thousand drinking water projects across the country.
- EPA is working on the next SRF needs surveys with our state partners and the Agency appreciates the directed funding we received in FY 2020. The surveys involve a multi-year process that will require future appropriations to ensure completion of the surveys, which are in the early stages of development.



## WATER REUSE

### **BACKGROUND:**

- Water reuse (also known as *recycled* or *reclaimed* water) can be a valuable means to enhance the availability and effective use of our Nation's water resources.
- Examples of sources of water for potential reuse include: municipal wastewater; agricultural runoff and irrigation return flows; oil and gas produced wastewater, industry process and cooling water, and stormwater. The draft National Water Reuse Action Plan (September 2019) estimates the total volume of these five potential sources for reuse at 340 billion gallons a day.
- These sources of water for potential reuse must be treated to meet appropriate "fit for purpose specifications" for the ultimate end use needs, including primarily public health and environmental protection.
- Water reuse has been used in U.S. communities for decades to:
  - accommodate population and economic growth;
  - reduce stress to surface water and groundwater supplies;
  - build resilience to drought;
  - offset diminished or contaminated water supplies;
  - mitigate flooding impacts;
  - support agriculture productivity;
  - enhance environmental restoration; and
  - create alternative water supplies for sustainability and resiliency.
- EPA does not specifically regulate water reuse; the Agency recognizes and respects that the authority lies with the states to manage water resources. The Agency published *Guidelines for Water Reuse* (1980, with 1992, 2004, & 2012 updates) and the *Potable Reuse Compendium* (2017) which represent a compilation of current practices on potable reuse.
- On February 27, 2019, EPA Assistant Administrator for Water Dave Ross announced that the Agency will facilitate the development of a draft *National Water Reuse Action Plan (WRAP)*.
- The draft WRAP was released on September 19, 2019 and provided 46 proposed actions across a spectrum of strategic themes (e.g. policy, technology, outreach, workforce, research).
- On February 27, 2020, EPA and Federal Partners will launch implementation of the final WRAP, with an emphasis on critical actions to be taken by a spectrum of water partners to facilitate consideration of water reuse as a tool to improve the resiliency security and sustainability of the Nation's water resources.
  - The upcoming launch of the WRAP Implementation Plan is expected to mobilize more than 30 actions by as many as 15 different organizations.
  - As many as eight federal agencies will be leading or partnering on explicit actions and implementation milestones to support and encourage consideration of water reuse.
- EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program can provide financing for the implementation of water reuse and recycling projects that are ready for construction.
  - So far, EPA has issued two WIFIA loans for water recycling facilities totaling over \$700 million.
    - The City of San Diego, CA received a \$614 million WIFIA loan to help finance construction of a new advanced treatment facility to produce 30 million gallons per day of drinking-quality water.
    - Orange County Water District received a \$135 million WIFIA loan to expand its existing Groundwater Replenishment System to produce an additional 30 million gallons per day of drinking water supply.



- For the first time in FY 2019, EPA announced water reuse and recycling as a WIFIA priority and several prospective borrowers submitted letters of interest to implement such projects.
- The State Revolving Funds for drinking water and wastewater infrastructure also support projects related to water reuse at the state and tribal level.

#### **KEY POINTS:**

- EPA facilitated discussions among federal, state, tribal, and water sector stakeholders, and formed partnerships to develop the draft *National Water Reuse Action Plan*. It is not envisioned to be an “EPA Plan,” rather it is a national plan representing federal, state, tribal, local, industrial, agricultural, and other stakeholders.
- Ongoing efforts by federal agencies, such as U.S. Department of Energy’s *Grand Water Security Challenge*, and by NGOs dedicated to water resources management, will be coordinated and leveraged as part of an overarching strategy to advance water reuse as a potential tool for American communities’ utilization.

#### **TALKING POINTS:**

- EPA facilitated development of a draft *National Water Reuse Action Plan*, which leverages the expertise of industry; agriculture; governments at the federal, state, tribal, and local levels; and other stakeholders to enhance consideration of water reuse to ensure the effective use of the Nation’s water resources.
- It is imperative that the federal government coordinate research, funding, and implementation of water reuse to ensure the strategic long-term viability of the nation’s water resources.
- EPA anticipates releasing the *National Water Reuse Action Plan: Collaborative Implementation* (Volume 1) on February 27, 2020, in conjunction with an array of federal and water sector partners.



## FEDERAL WATER OFFICIALS – “WATER SUBCABINET”

### **BACKGROUND:**

- With the intent of achieving more effective results for the American people, Senior Federal Water Officials at the Assistant Secretary, Assistant Administrator and Under Secretary level are focused on increasing coordination and reducing duplication on water issues across the federal government.
- The purpose of the Federal Water Officials group, often referred to as the Water Subcabinet (WSC), is to collaborate, prioritize, accelerate, facilitate, and oversee the completion of critical goals to national water supply reliability.
  - Reducing cost, cutting down on duplicative programs and reducing fragmentation and overlap through increased communication, awareness, and defined roles and responsibilities while implementing the One Federal Lead concept across the federal water space.

### **KEY POINTS:**

- The WSC is not authorized to regulate. Rather it is organized to collaborate, remove obstacles, resolve conflicts, and provide and concentrate resources across the federal government to increase the supply of safe, clean and reliable water in the United States.
- How it works:
  - *The Power of Convening*: Monthly meetings of principals, and bi-monthly meetings of deputies facilitate constant communication within the federal government.
  - *Focus*: WSC focuses federal water activities across five foundational themes – listed below in talking points.
  - *One Federal Lead*: WSC identifies and prioritizes goals, metrics, timelines and designating One Federal Department/Agency/Bureau to act as the lead in overseeing and facilitating the completion.

### **TALKING POINTS:**

- The Federal Water Officials have come together to leverage technical and financial federal resources to achieve efficient and effective outcomes in addressing challenging water issues in key water management areas such as:
  - Drought Resiliency/Water Supply Enhancement and Storage;
  - Water Quality and Nutrients;
  - Infrastructure Finance;
  - Data Management, Modeling, and Forecasting; and,
  - Flood Control and Management.
- The agencies involved in this partnership are meeting frequently and revamping their internal structure to meet the challenges ahead as a collective to innovate and rethink how we manage and address water quality, water infrastructure finance, and management of water resources in the United States.



## **WESTERN LAKE ERIE BASIN OHIO AND MICHIGAN CWA 303D IMPAIRED WATERS**

### **BACKGROUND:**

- The Western Lake Erie Basin has historically experienced persistent harmful algal blooms (HABs). In August 2014, Toledo was subject to a Do Not Drink order for three days due to an outbreak of microcystin (an algal toxin). Annex 4 of the Great Lakes Water Quality Agreement sets aggressive phosphorus reduction targets to address the problem of HABs in Lake Erie.
- In February 2017, the EPA approved Michigan's 2016 section 303(d) list, which identified the state's portion of the Western Lake Erie Basin as impaired for aquatic life use due to HABs.
- In May 2017, the EPA approved Ohio's 2016 section 303(d) list, which identified Lake Erie's shoreline waters as impaired for drinking water use. Ohio's 2016 list did not assess the open waters for impairments.
- In July 2017, the Environmental Law & Policy Center (ELPC) filed suit in federal court in the Northern District of Ohio alleging that the EPA's approval of Ohio's 2016 list was arbitrary and capricious because it did not include the open waters of the Western Lake Erie Basin. In May 2018, Ohio amended its 2016 list to identify the Western Lake Erie Basin as impaired for recreation and all the open waters as impaired for drinking water. The EPA then approved Ohio's amended 2016 list, and the merits of this lawsuit were resolved.
- EPA approved Ohio's 2018 list in July 2018, which again identified the Western Lake Erie Basin as impaired for recreation and all the open waters as impaired for drinking water. Since then, the ELPC and the Board of Lucas County Commissioners each filed new lawsuits (which were subsequently consolidated) seeking to compel the development of a TMDL for the Western Lake Erie Basin.
- Ohio's Governor recently unveiled the State's H2Ohio plan, which calls for an almost \$1 billion investment in clean water during the next decade. The H2Ohio plan is an investment in targeted solutions to help reduce phosphorus runoff and prevent algal blooms through increased implementation of agricultural best practices, the creation of wetlands, and replacing failing home septic systems. The H2Ohio phosphorus reduction plan will focus first on reducing runoff into the Maumee River Watershed and Lake Erie. Farmers in the Maumee River Watershed will be able to enroll in H2Ohio programs for funding incentives in time for spring 2020 planting.
- The state of Ohio recently enacted legislation providing \$172 million over the next two years to address critical water quality issues across the state, including nutrient pollution affecting Western Lake Erie. This is the first phase of the H2Ohio plan.
- See additional Fact Sheets on: "Addressing Nutrient Pollution," "HABs in Recreational Waters," and "HABs and Drinking Water."

### **KEY POINTS:**

- Section 303(d) of the CWA and its implementing regulations require states to assemble and evaluate all existing and readily available water quality related data and information and submit for the EPA's approval or disapproval lists of their waters that do not meet the states' applicable water quality standards (WQS). WQS include both narrative and numeric criteria.



- By including the open waters of the Western Lake Erie Basin on its 303(d) lists, Michigan and Ohio concluded that the lake is impaired and not meeting WQS because of excessive algae levels.<sup>1</sup>

**TALKING POINTS:**

- Ohio is seeking to address its contribution of pollution to Lake Erie through numerous state initiatives to reduce nutrient loads (e.g., active participation on nutrient efforts associated with the Great Lakes Water Quality Agreement).
- EPA has and continues to support Ohio's efforts to address nutrients in the watershed and appreciates the serious commitment to environmental protection in the innovative H2Ohio plan.
- Because there are multiple active lawsuits on this issue, I'm unable to comment further.

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<sup>1</sup> Ohio 2018 lists the causes of Lake Erie impairment as: 1) nutrients and 2) algae | Michigan 2018 lists the causes of Lake Erie impairment as: 1) nutrient/eutrophication biological indicators and 2) cyanobacteria hepatotoxic microcystins.



## **WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION ACT (WIIN) DRINKING WATER GRANTS**

### **BACKGROUND:**

- The Water Infrastructure Improvements for the Nation Act of 2016 (WIIN) authorized three new grant programs. Beginning in Spring 2018, EPA received appropriations to fund these new grants.

#### Assistance for Small and Disadvantaged Communities

- Since FY 2018, Congress has appropriated over \$65M (FY 2018, FY 2019, and FY 2020) to help public water systems in small and disadvantaged communities meet Safe Drinking Water Act (SDWA) requirements.
- The FY 2018 and FY 2019 funds are being awarded as non-competitive grants by formula to states and tribes. Applicants are required to meet a 45% cost-share match.
- In September 2019, EPA opened the application period and began awarding grants in November 2019. States and territories have one calendar year to apply.
- EPA is assessing the best approach for awarding the FY 2020 funding.

#### Reducing Lead in Drinking Water

- Congress appropriated over \$40M (FY 2018, FY 2019, and FY 2020) for projects or activities that reduce the concentration of lead in water for human consumption. Some lead service line replacements projects are ineligible (i.e., partial lead service line replacement).
- EPA will award the FY 2020 grant funding competitively. EPA issued the Request for Applications on February 19, 2020.
- The deadline for applications is June 1. EPA extended the deadline to allow communities more time due to COVID-19.

#### Lead Testing in School and Child Care Program Drinking Water

- Congress appropriated almost \$70M (FY 2018, FY 2019, FY 2020) to assist local educational agencies in voluntary testing for lead contamination in drinking water at schools and child care programs.
- EPA is awarding these grants as non-competitive formula-based grants to states and tribes.
- In September 2019, EPA began accepting grant applications and awarding funds.
- EPA anticipates announcing availability of the FY 2020 funding by March 2020.

### **KEY POINTS:**

- Senator Sullivan and likely other members disagree with EPA's current allocation approach for the Small and Disadvantaged Communities grant because it provides a small amount of funding to every state rather than having an approach that would result in a larger amount of funding per award to assist the most disadvantaged small systems.
  - EPA is developing new allocation proposals for the next round of funding in response to these concerns.



- The WIIN grants were first authorized in 2016, further amended in 2018 by the America's Water Infrastructure Act of 2018 (AWIA), and many Senators are interested in additional amendments in 2020.

**TALKING POINTS:**

- EPA is actively implementing the drinking water grants under the WIIN Act.
- EPA is working collaboratively with states to ensure that these grant programs will successfully support activities to protect public health and provide safe drinking water.
- In the FY 2021 President's budget, EPA is requesting \$15 million for the Lead Testing in Schools grant program. This grant program also includes Drinking Water Fountain Replacement.
- EPA also requests \$20 million for the Reduction of Lead in Drinking Water Grant Program.
- For Alaska, the FY 2021 President's budget request includes \$3 million for the Alaska Native Villages program and in FY 2019, the EPA awarded funding for 13 water or sewer infrastructure construction projects that will ultimately improve water/sewer services to 2,750 Alaskan rural and native homes.



## **WATER WORKFORCE**

### **BACKGROUND:**

- One of the most pressing challenges facing the water sector is maintaining and retaining a capable, knowledgeable, and diverse workforce with economically competitive jobs for water professionals.
- EPA has worked with the Department of Labor and other agencies to develop the Water and Wastewater Workforce Competency Model and collaborated with the Department of Defense to develop the document “From M.O.S. to J-O-B: A Guide for Applying Military Occupational Specialties (M.O.S.) to Civilian Drinking Water and Wastewater Operations” to help veterans identify water-related occupations that align with their military experience.
- EPA continues to engage with our federal and industry partners such as the American Water Works Association, the Water Environment Federation, the National Association of Clean Water Agencies, and other organizations to amplify their efforts and identify joint initiatives to support workforce development and raise awareness of the importance of American water workers.
- Tribal water utilities also face unique challenges in retaining the necessary qualified personnel to provide clean and safe water to the communities they serve. EPA has initiated a tribal water workforce workgroup, made up of tribal members, federal partners, tribal utility managers, and technical assistance providers to highlight best practices and identify gaps to address the workforce needs of tribal water systems.
- The FY 2020 appropriation included \$1 million for the Workforce Investment Grant Program authorized by AWIA and the FY 2021 President’s budget also requests \$1 million.

### **KEY POINTS:**

- EPA has committed to helping address water workforce challenges and supporting American water workers over the years by:
  - Collaborating with other federal agencies, states, and others with workforce development and water and wastewater infrastructure missions to support the water sector workforce.
  - Actively engaging with water and wastewater utilities and associations who are developing innovative workforce development programs.
  - Exploring collaborative opportunities with community colleges, vocational schools, universities, and others.
  - Taking concrete actions to share successful practices, support communities, build workforce diversity, and elevate awareness of the importance of and opportunities for water worker.
- In 2019, EPA announced its Water Workforce Initiative. The goal of this new initiative is to provide federal leadership, collaborate with partners and increase public awareness to bolster interest in water sector careers. This spring EPA plans to release its Water Workforce Initiative for public comment.

### **TALKING POINTS:**

- Our communities depend on the dedicated workers at drinking water and wastewater systems to protect public health and the environment every day.
- These critical workers are eligible to retire in the next decade at levels that will stress our ability to operate our critical infrastructure.
- That is why EPA initiated its Water Workforce Initiative in 2019, and we look forward to implementing the Workforce Investment Grant Program Congress funded in FY 2020 and requesting funding for this program in FY 2021 and beyond.



## **WATER SERVICE AFFORDABILITY**

### **BACKGROUND:**

- Households on fixed or lower incomes, as well as households that face a temporary crisis, such as a job loss or illness, may have difficulty paying for water services.
- In the FY 2016 appropriation, Congress directed EPA to utilize the National Academy of Public Administration (NAPA) to conduct an independent study to create a definition and framework for community affordability.
  - NAPA issued its report, “Developing a New Framework for Community Affordability of Clean Water Services,” in October 2017, with 21 recommendations that EPA can use to update affordability procedures and analyses.
  - In response to NAPA’s report and the feedback from other stakeholders, EPA plans to publish a Federal Register Notice (FRN) in Spring 2020 on affordability challenges. The FRN will contain additional examples, templates, and calculations on the flexibilities that local authorities can use in assessing their financial capability.
- The Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Fund (DWSRF), and Water Infrastructure Finance Innovation Act (WIFIA) are sources of low-cost financing for a wide range of wastewater and drinking water infrastructure projects.
- Section 4101 of America’s Water Infrastructure Act of 2018 requires EPA to establish a Stormwater Infrastructure Funding Task Force to study and make recommendations regarding the availability of funding for the construction, rehabilitation, and operation and maintenance of stormwater facilities. EPA’s Report to Congress, including the Task Force’s recommendations, is due in April 2020.

### **KEY POINTS:**

- SRF interest rates are significantly lower than market rates and these programs help make drinking water and wastewater more affordable.
- Over the last 30 years, CWSRF low-cost loans have saved borrowers more than \$37 billion in interest costs.
- Additional subsidization authority in the SRF programs is a critical tool for helping to address affordability issues.
  - Under the CWSRF, state programs must provide up to a fixed percentage of their capitalization grants as additional subsidization in the form of principal forgiveness, negative interest loans, or grants.
  - Under the DWSRF, a state must provide at least 6% of their capitalization grant as additional subsidy to disadvantaged communities as loan subsidies.
- Permitting flexibility and market mechanisms such as water quality trading and integrated planning are tools the Agency promotes to help address water affordability issues. See additional Fact Sheets on: water quality trading and integrated planning.

### **TALKING POINTS:**

- EPA recognizes the important role that water rates play in sustaining our nation’s water and wastewater infrastructure and in assuring equitable access to clean and safe water and sewer services.
- Together with our state partners, water utilities, and other stakeholders, EPA is seeking innovative approaches to address this critical issue. EPA is planning to publish a Federal Register Notice this Spring to request feedback and comments on modernizing EPA’s affordability policies.



## WATERSENSE

### **BACKGROUND:**

- WaterSense is a voluntary partnership and labeling program sponsored by EPA to promote water-efficient products and practices. Congress formally authorized the program in the America's Water Infrastructure Act of 2018 (AWIA).
- WaterSense labeled products are intended to perform as well as other products because the specifications include criteria for efficiency and performance. Manufacturers can choose to participate by designing products that meet WaterSense specifications.
- WaterSense partners with manufacturers, retailers and distributors, homebuilders, utilities, local governments, and non-governmental organizations to bring WaterSense to communities across the country. However, the WaterSense program has never undertaken a broad "customer satisfaction" survey to determine the public's views of products that carry the WaterSense label.
- Through 2018, the program estimates that WaterSense labeled products have helped consumers save more than 3.4 trillion gallons of water and \$84.2 billion in water and energy bills.
- WaterSense works collaboratively with the Department of Energy, for example:
  - When WaterSense develops a voluntary specification for a product which is subject to regulation by a DOE standard, we look to establish an efficiency level that is at least 20 percent more efficient than the DOE level.
  - When DOE revises a standard, they look at the WaterSense efficiency level to determine if/how it could be used in a revised standard. The WaterSense efficiency level was used when DOE revised the standard for pre-rinse spray valves (PRSVs).
- In public statements, President Trump has been critical of toilets and showers with water conservation components because of concerns that the products significantly limit public product choice and do not operate effectively.

### **KEY POINTS:**

- Consistent with budget requests in FY 2019 and FY 2020, the FY 2021 President's Budget proposes the elimination of WaterSense.
- Congress has rejected this proposed elimination in FY 2019 and FY 2020 and has directed EPA to fund the WaterSense program and fully authorized the program under AWIA. The President signed AWIA into law on October 23, 2018.
- AWIA required that the EPA "consider for review and revise, if necessary, any WaterSense performance criteria adopted before January 1, 2012." As a result, several WaterSense specifications—including those for tank-type toilets, lavatory faucets and faucet accessories, showerheads, flushing urinals, and weather-based irrigation controllers—were reviewed for potential improvements to water efficiency and/or product performance. The review included the opportunity for public input.
- After reviewing the public comments and considering all available information, EPA determined not to update or make any changes to existing product specifications following its AWIA-mandated review. EPA did determine, however, that more information is needed on how the WaterSense program should consider consumer satisfaction in product specification development in the future. As a result, EPA published a Federal Register Notice on April 10, 2020 requesting comment on consumer satisfaction issues, including how to structure a



consumer satisfaction survey, and providing notice of its decision not to update any product specifications at this time.

**TALKING POINTS:**

- EPA is engaging with WaterSense stakeholders and the public to ensure that WaterSense products help preserve our nation's water supplies while providing a variety of choices to consumers.
- The President is concerned that in pursuing water efficiency we have sacrificed performance and are not achieving the stated efficiency targets, while reducing consumer choice. EPA agrees with his concerns and is working to implement a consumer satisfaction survey to ensure that the program is operating as intended.



## **BLENDING / PEAK FLOWS AT WASTEWATER TREATMENT FACILITIES**

### **BACKGROUND:**

- Rain and snowmelt can significantly affect the operations of a publicly owned treatment works (POTW) when excess water enters the wastewater collection system. When there is a significant increase of water flowing through the system, it can exceed the capacity of the biological or advanced treatment units and potentially damage and shut down the wastewater treatment plant. If biological or advanced treatment systems are damaged due to excess liquid the system can be inoperable for days if not weeks.
- One process many plant managers have relied on to protect their systems during peak flow events to protect their treatment systems is called blending.
- Blending involves routing excess water around a section of the treatment system until the peak flow subsides and blending that re-routed flow with the fully treated flow prior to discharge.
- Current regulations prohibit bypass, defined as “the intentional diversion of waste streams from any portion of the treatment facility,” except in specific circumstances.
- Two previous blending policies proposed in 2003 and 2005 were never finalized and subsequent litigation has created an inconsistent regulatory framework across the nation as well as uncertainty for POTWs about operations during wet weather.

### **KEY POINTS:**

- EPA plans to propose a rule that would update and clarify the National Pollutant Discharge Elimination System (NPDES) regulations to establish a transparent and lasting framework for peak flow management options at POTWs with separate sanitary sewer systems.
- Individual POTWs and their permitting partners in state environmental agencies have collaborated to put into operation a diverse collection of successful approaches for addressing peak flow events and EPA is taking those approaches into account in its rulemaking process.
- EPA has performed extensive outreach on this issue. We held three listening sessions, opened a 60-day comment period to solicit early input from the public, and hosted a technical stakeholder roundtable. We have been evaluating this input and the latest technical and public health information as we prepare the proposed rule, which we anticipate publishing in summer 2020.

### **TALKING POINTS:**

- The Peak Flows Rulemaking effort is designed to ensure continuous, flexible, and cost-effective operation of wastewater treatment plants during periods of peak flows while meeting environmental and public health goals.
- Contrary to false allegations, the Peak Flows Rulemaking is not designed to allow raw sewage to be discharged into our waters. The rule will allow facilities to protect their systems during peak flows, while still providing treatment that ensures existing standards can be met.



## **NONPOINT SOURCE (SECTION 319) GRANTS ELIMINATION**

### **BACKGROUND:**

- Nonpoint source (NPS) pollution is diffuse and occurs when precipitation runs over the ground and picks up pollutants before entering streams, lakes and other waters. It is the leading source of water quality impairment in the nation.
- Under Section 319 of the Clean Water Act, the EPA awards grants to states, territories and tribes to manage polluted runoff programs and implement local projects to restore impaired waters.
- Of all the waterbodies across the nation that have been assessed and where impairment sources have been identified, 85% of rivers and streams and 80% of lakes and reservoirs are impaired by NPS. NPS pollution encompasses a range of sources that are not subject to federal regulation.
- Section 319 grants are awarded via an allocation formula. Under FY 2019 appropriation levels, funding ranged from about \$1 million to \$8 million per state. States develop NPS Management Plans that strategically guide the use of funds, which can be used to support state staff, monitoring, watershed restoration projects, technical assistance, and other NPS activities.
- The vast majority of efforts to control NPS pollution are based on collaborative action. In agricultural areas, the EPA and states partner closely with USDA's Natural Resources Conservation Service (NRCS) to coordinate Farm Bill incentive funding with Section 319 funds for agricultural conservation practices to reduce sediment and nutrient runoff. In urban/suburban areas, key partners include local health departments and municipalities.
- USDA funds may only be used to implement agriculture best management practices (BMPs). Section 319 funds both agriculture BMPs and watershed coordination, landowner outreach, cost-share to encourage landowner participation, and monitoring of results.

### **KEY POINTS:**

- The FY 2021 President's Budget proposes to eliminate the Nonpoint Source (Section 319) grants which were funded at \$172 million in the FY 2020 enacted budget.
- In December 2018, the EPA and USDA sent a letter to state environmental and agricultural directors, inviting them to collaborate in innovative ways to help reduce nutrient pollution to water resources.
- The EPA released a new water quality trading policy memorandum on February 6, 2019 to reiterate the EPA's support for water quality trading and other market-based mechanisms to maximize pollutant reduction efforts and improve water quality.

### **TALKING POINTS:**

- This program elimination is part of the Administration's overall goal to return the responsibility for regional and local environmental work to state and local entities.
- The state revolving funds and WIFIA provide billions in funding to our state and local partners with sufficient flexibility to address surface water impairments.
- Many states are implementing individual State Nutrient Reduction Strategies; these strategies integrate, strengthen, and quantify nutrient load reductions at the basin level from all sources.



## **WASHINGTON HUMAN HEALTH WATER QUALITY CRITERIA - FEDERAL WITHDRAWAL ACTION**

### **BACKGROUND:**

- On May 10, 2019, after a detailed review of the State's 2016 submittal, applicable provisions of the Clean Water Act, implementing regulations, and longstanding EPA policy and guidance, EPA reconsidered its 2016 partial disapproval of Washington's human health criteria and approved all the criteria that EPA previously disapproved, except for arsenic.
- On April 16, 2020, EPA signed a final rule to withdraw certain federal human health water quality criteria that were promulgated for Washington following EPA's 2016 partial disapproval.
- A significant factor in deciding to reconsider EPA's disapproval was Washington's lengthy and thoughtful process wherein the State considered the health and safety of its citizens and the appropriateness of applying EPA's 2015 national recommendations to the State's resources.
- Washington's EPA-approved criteria will be applicable as water quality standards for Clean Water Act purposes after the withdrawal of EPA's federal rule takes effect, which will be 30 days after publication in the Federal Register.
- The State of Washington has initiated litigation challenging EPA's authority to reverse the previous partial disapproval and approve the State's own standards.

### **KEY POINTS:**

- EPA has determined that Washington's 2016 criteria are protective of its water bodies' designated uses, are based on sound science, and are consistent with the Clean Water Act.
- EPA's final rule withdrawing federal criteria following approval of the State criteria is consistent with the federal and state roles contemplated by the Clean Water Act.
- EPA offered a 60-day public comment period on its August 6, 2019 proposal to withdraw the federal criteria and two public hearings, one online on August 28, 2019, and one in-person on September 25, 2019, in Seattle, Washington.
- EPA received 333 unique comments on the proposal to withdraw the federal criteria and over 5,000 comments from mass mailing campaigns. EPA received a mixed reaction to the proposed withdrawal of the federal criteria in Washington, with support from the regulated community and criticism from tribes, environmental groups and the State of Washington. A central concern voiced by tribes is that EPA failed to engage in meaningful consultation with tribal governments prior to its May 10, 2019 decision.

### **TALKING POINTS:**

- EPA's actions on these water quality standards and criteria are based on sound science and are consistent with the law.
- The Clean Water Act provides states with the authority and discretion to make resource- and risk-management decisions related to the protection of human health.
- This regulatory action restores the State criteria that it certified to EPA were protective of public health. We have approved and agree with the State's sound scientific judgment.



## **WATER QUALITY TRADING AND MARKET-BASED MECHANISMS FOR IMPROVING WATER QUALITY**

### **BACKGROUND:**

- The EPA has supported the use of water quality trading, offsets and similar programs for achieving compliance with regulatory requirements of the Clean Water Act (CWA) for many years, but with limited success. In February 2019, the EPA issued a new water quality trading policy memo with the goal of facilitating the broader adoption of market-based and other collaborative programs and to encourage creativity and innovation in the development and implementation of pollutant reduction programs.
- EPA has clear CWA regulatory authority over point sources that discharge pollutants into navigable waters and has leveraged that authority for decades to achieve significant pollutant reductions from those dischargers.
- The CWA does not provide the same federal regulatory authority over non-point sources of pollutants, and non-point discharges remain a significant contributor of nitrogen and phosphorous that make achieving greater water quality improvements difficult.
- Water quality trading, and other market-based mechanisms, can be used to promote water quality improvements by allowing point source dischargers to invest in lower cost non-point source pollutant reductions in the watershed to meet NPDES permit requirements, thereby avoiding the high cost of additional infrastructure while reducing non-point pollutant discharges and improving water quality.
- In September 2019, EPA issued a Federal Register notice and hosted a public meeting to seek input on possible policy options related to the issue of baselines, one of the six principles from the February 2019 policy memo. The issue of baselines is about the ability of a discharger to generate credits to allow for the buying and selling of those credits in a marketplace. The EPA's longstanding approach to "baselines" has been that credit sellers must meet their waste load allocation (for point sources) or load allocation (for non-point sources), their "baseline," on a site-specific basis before they could generate credits to sell. The new policy memo encourages simplicity and flexibility in implementing baselines to help create a marketplace for trading.
  - The Federal Register notice proposes several policy options that could allow non-point dischargers to generate saleable credits at the same time they work to meet their load allocation baseline.
  - The public comment period closed on December 18, 2019, and EPA is reviewing the public comments received.
- Also see Fact Sheet on: "Addressing Nutrient Pollution."

### **KEY POINTS:**

- The EPA's actions are part of a larger collaboration with states, tribes and stakeholders across the country to incentivize private resources and better coordinate and focus federal resources on some of the nation's most challenging water resource concerns, including addressing excess nutrients in waterways.
- The February 2019 memo contains six market-based principles that expand and clarify the range of policy options available to states and tribes. Although the memo is directed at water quality trading programs used for CWA compliance, the six principles may be incorporated



into any market-based, community-based or collaborative approach to improving water quality, including pay-for success programs, and environmental bonds.

- Market-based mechanisms may be a critical component to addressing non-point sources of pollution, which are generally beyond the scope of the EPA's CWA regulatory authority.

**TALKING POINTS:**

- EPA strongly supports the use of water quality trading to improve water quality, often at a lower cost than traditional regulatory approaches.
- Water quality trading encourages the implementation of new technologies and land use practices that reduce non-point pollution in our Nation's waters.
- EPA issued a February 2019 memo that modernizes the Agency's approach to water quality trading by providing six market-based principles that expand and clarify the range of options available to states and tribes.
- Also, to help address excess nutrients, in August 2019, EPA and USDA hosted a National Nutrient Finance Forum to engage the public on innovative financing strategies. Innovative financing mechanisms can help expedite and expand projects to reduce nutrient pollution.



## **NUTRIENT POLLUTION / HARMFUL ALGAL BLOOMS / NEW GRANT PROGRAM REQUEST**

### **BACKGROUND:**

- Nutrient pollution is a wide-ranging challenge affecting water quality across the country. Outbreaks of harmful algal blooms (HABs) threaten the health of humans and pets in a number of waters across the country and can harm local economies.
- Addressing excess nutrients in surface water is one of the highest priorities for the EPA and other federal agencies with a focus on several key watersheds throughout the country.
- Please also see Fact Sheets on: HABs Recreational Waters, HABs Drinking Water, Addressing Nutrient Pollution.

### **KEY POINTS:**

- To better address the excess nutrient challenge and to help states and tribes respond to HABs, the EPA is working to identify opportunities for meaningful reductions in nonpoint nutrient losses and improvements in water quality. These opportunities will require using all the tools available to address excess nutrients in watersheds, including non-regulatory and market-based programs.
- In FY 2021, EPA is requesting \$15 million for a new competitive grant program to fund prevention and response efforts for HABs with significant health or economic risks as well as broader hypoxia and nutrient reduction efforts.
- This grant program would help states and tribes:
  - prioritize watersheds for efforts to prevent HABs and other harmful effects of excess nutrients;
  - set science-based goals for nutrient reduction efforts;
  - identify and adopt state-level actions and programs to better support nutrient reductions;
  - deploy staff to plan, prioritize, engage partners and stakeholders;
  - monitor nutrients and harmful algal blooms to assess progress;
  - report and communicate results to the public; and
  - develop or implement a water quality trading or other market-based program.

### **TALKING POINTS:**

- Nutrient pollution is a serious challenge affecting water quality across the country, and can lead to harmful algal blooms, fish kills, and harm to local economies.
- The EPA supports our partners, including states, tribes, and farmers, to address excess nutrients in watersheds, including regulatory, non-regulatory, market-based, and other collaborative approaches.
- In FY 2021, EPA is requesting \$15 million for a new competitive grant program to fund prevention and response efforts for harmful algal blooms and nutrient reduction efforts.



**Categorical Grant: Nutrients and Harmful Algal Blooms Reduction Grants**

Program Area: Categorical Grants

Goal: A Cleaner, Healthier Environment

Objective(s): Provide for Clean and Safe Water

(Dollars in Thousands)

	<b>FY 2019 Actuals</b>	<b>Estimated FY 2020 Enacted</b>	<b>FY 2021 Pres Budget</b>	<b>FY 2021 Pres Budget v. Estimated FY 2020 Enacted</b>
<i>State and Tribal Assistance Grants</i>	<i>\$0.0</i>	<i>\$0.0</i>	<i>\$15,000.0</i>	<i>\$15,000.0</i>
Total Budget Authority	\$0.0	\$0.0	\$15,000.0	\$15,000.0

**Program Project Description:**

Harmful algal blooms (HABs), which can be caused by nutrient pollution, remain a widespread water quality challenge across the country despite decades of effort to achieve reductions. The sources and impacts of nutrient pollution vary depending on geographic location, and span urban, rural, and coastal landscapes.

The FY 2021 request of \$15 million will establish a competitive grant program to fund prevention and response efforts for HABs with significant health or economic risks. Funded projects should further the implementation of HAB-specific state nutrient reduction strategies and programs and should include one or more of the following strategic outputs and outcomes: prioritization of high-impact watersheds; goal setting to support targeting and tracking of implementation efforts; identification and adoption of state-level actions and programs to better prevent and respond to HABs; deployment of staff to plan, prioritize, engage partners and stakeholders in priority watersheds, and manage progress tracking mechanisms; assessment of progress; and reporting and communicating of state progress to the public. State workplans also could support other priority actions identified in a harmful algal bloom strategy or program, including developing or implementing a trading program; modeling and monitoring harmful algal blooms; and watershed planning support.

**FY 2021 Activities and Performance Plan:**

Work in this program directly supports Goal 1/Objective 1.2, Provide for Clean and Safe Water in the *FY 2018 - 2022 EPA Strategic Plan*. The FY 2021 request establishes this grant program. EPA plans to issue the grant awards for this new program beginning in FY 2021. In addition, under the provisions of the Harmful Algal Bloom and Hypoxia Research and Control Act of 2017, EPA would be able to declare if a freshwater HAB or hypoxia event is of national significance and assist the states and tribes with assessing and mitigating the detrimental environmental, economic, subsistence use, and public health effects of the event of national significance.



**Performance Measure Targets:**

(PM SWP-02) Watersheds with surface waters not meeting standards because of nutrients (square miles).

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Units
Target								192,096	Square Miles
Actual									

**FY 2021 Change from Estimated FY 2020 Enacted Budget (Dollars in Thousands):**

- (+\$15,000.0) This funding establishes a new competitive grant program to fund prevention and response efforts for HABs with significant health or economic risks and supports the nutrient and HAB reductions focus area.

**Statutory Authority:**

Clean Water Act, Harmful Algal Bloom and Hypoxia Research and Control Act of 2017.



## **CA AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY DELTA**

### **BACKGROUND:**

- The San Francisco Bay/Sacramento–San Joaquin Delta Estuary (Bay–Delta) is the hub of California’s water supply system and a valuable estuary/wetland that supports municipal, industrial, agricultural, recreational, and ecological beneficial uses.
- California recently updated its Water Quality Control Plan (WQCP), which establishes water quality requirements to protect these designated beneficial uses. The WQCP includes provisions that EPA has in the past (1995) approved as water quality standards (WQS) and other provisions (such as implementing procedures) that are not WQS.
- The California Water Resource Control Board (State Board) is engaged in a long-term process to modify the WQCP for the Bay-Delta, proceeding in two phases: “Phase 1” is the San Joaquin Watershed and “Phase 2” is the Sacramento Watershed.
- The State Board adopted Phase 1 revisions on December 12, 2018. The revisions address instream flows and salinity on the San Joaquin River and tributaries (Stanislaus, Tuolumne and Merced Rivers).
- On March 13, 2019, the State Board submitted a letter requesting EPA’s review and approval of the revised salinity standard. The letter directed EPA to the State Board’s website to obtain supporting documentation for the salinity standard. The State Board did not request EPA’s review of the instream flow standard.
- Salinity criterion: To protect agricultural uses in the southern Delta, the WQCP includes a revised salinity numeric criterion; establishing a year-round salinity criterion of 1.0 deciSiemens per meter (dS/m) in the Southern Delta. The State Board determined that the previous two-tiered criteria (with a stricter standard of 0.7 dS/m applying April through August) was more protective than necessary. Note: the new standard (1.0 dS/m) does not apply to federal dam owners. These dam owners remain subject to the more stringent standard (0.7 dS/m).

### **KEY POINTS:**

- On June 11, 2019, EPA notified the State Board that the submittal was deficient as it did not include all elements required by EPA’s regulations. EPA requested that the State Board submit the required information within 90 days (September 9, 2019), pursuant to the statutory timeline requirement.
- On August 26, 2019, the State Board submitted a request that EPA review and approve the updated submittal and provided supplemental hard copy documentation on August 30, 2019.
- There is no Clean Water Act deadline for EPA to act on a re-submission that addresses a notice from EPA that the original submission is deficient and would be disapproved if not remedied within the 90-day deadline.
- The State of California continues to negotiate with water sector stakeholders over voluntary agreements designed to address many of the issues addressed in the regulatory components of the Bay-Delta Plan. EPA supports those voluntary agreement negotiations.

### **TALKING POINTS:**

- On August 26, 2019, the State Board submitted a request that EPA review and approve their updated submittal.
- EPA is in the process of reviewing the updated submittal.



## **GOLD KING MINE/ SAN JUAN WATERSHED MONITORING PROGRAM**

### **BACKGROUND:**

- In 2016, under the Water Infrastructure Improvements for the Nation (WIIN) Act, Congress authorized \$4 million per year for 2017–2021 for EPA to develop a long-term water quality program for the waters impacted by the Gold King Mine (GKM) release.
- As a result of the GKM release that occurred on August 5, 2015, New Mexico, Utah, the Navajo Nation, and almost 300 hundred private tort plaintiffs (including Navajo Nation members) sued the United States, the EPA, the EPA Administrator, EPA contractors, and mine owners.
- Litigation is in discovery with trial tentatively set for August 2021. Because the US is in active litigation, EPA is not able to answer questions about the GKM lawsuits.
- Pursuant to the request from the Governor of Colorado, EPA added the Bonita Peak Mining District Site to the National Priorities List (NPL) on September 9, 2016 in order to (1) improve water quality; (2) stabilize source areas; and (3) minimize unplanned releases.
- Downstream from the headwaters of the Animas River, water quality monitoring shows that the Animas and San Juan Rivers usually meet water quality standards for the metals associated with mining and abandoned mines. States have identified numerous areas with impaired water quality due to pathogens, nutrients and sediment. At a number of areas in the watershed, during certain times of the year, monitoring shows episodic exceedances of state or tribal water quality standards for “trace” metals like lead, zinc, cadmium, as well as for common earth metals like aluminum. These exceedances are not caused by the 2015 GKM release.

### **KEY POINTS:**

- EPA and the states and tribes adjoining the San Juan watershed—Arizona, Colorado, New Mexico, Utah, Navajo Nation, Ute Mountain Ute Tribe, and Southern Ute Indian Tribe—are working together to monitor water quality throughout the watershed and act on identified water quality problems using the best available data and science.
- This Program has been authorized for five years of federal funding (\$4M/year) and has been appropriated four years of funding to date.
- The EPA, states, and local jurisdictions have collaborated on the following approach for program design and funding prioritization:
  - The first year of the program focused on development of the San Juan Watershed coalition, composed of EPA, the four states, and the three tribes to prioritize actions to inform funding decisions. The coalition agreed to conduct a watershed-wide monitoring effort to fill data gaps and fund a series of state-identified priorities to better inform individual stakeholder efforts.
  - The second year of the program resulted in a shift to a greater emphasis on watershed-wide efforts, with individual stakeholders taking leadership on select actions.
  - The third year of the program transitioned to focus on synthesizing the wide array of available information to communicate conditions of water arrayed by uses across the watershed.
  - The fourth year of the program will focus on continued collaboration with the states and tribes to conduct needed water quality monitoring and implement scientific studies that will inform management decisions.
- This program has been proposed for elimination in the FY 2021 President’s budget.

### **TALKING POINTS:**

- With the funding Congress has provided so far, EPA, in collaboration with the states and tribes, continue to monitor water quality, inform stakeholders regarding the condition of the waters, and identify projects that will benefit the watershed.
- We are pleased that water quality monitoring shows that the Animas and San Juan Rivers, downstream from the mining district in the headwaters of the Animas, usually meet water quality standards for the metals associated with mining and abandoned mines.



## OFFICE OF WATER COVID-19 RESPONSE AND ACTIVITIES

### **BACKGROUND:**

- Ensuring that drinking water and wastewater services are fully operational is critical to containing COVID-19 and protecting Americans from other public health risks.
- The water sector and its workforce are working to keep vital water services going despite several challenges posed by COVID-19.
- These challenges include potential worker shortages, potential chemical supply chain shortages or disruptions, and immediate and long-term financial impacts on water utilities due to increased costs from the pandemic and reductions in customer revenue.
- Based on current evidence, the risk to water supplies from COVID-19 is low. Standard treatment and disinfection processes under EPA's regulations at water and wastewater treatment plants are expected to be effective against coronavirus. The COVID-19 virus has not been detected in drinking water supplies. The EPA has let Americans know they can continue to use and drink water from their tap as usual.

### **KEY POINTS:**

- The EPA is working closely with the water sector through regular engagements to listen to their needs and identify opportunities for the agency to provide support.
- Additionally, the EPA is coordinating the needs of the water sector across the federal government. For example, the EPA worked with the Department of Homeland Security (DHS) to include the water sector workforce, equipment, and chemical suppliers in DHS's essential critical infrastructure workforce guidance.
- Specific actions taken by EPA include:
  - Water sector workers
    - Sending letters from Administrator Andrew Wheeler to governors in all 50 states, territories, tribes, and Washington, DC, requesting that water and wastewater workers, as well as the manufacturers and suppliers who provide vital services and materials to the water sector, are considered essential workers and businesses by state authorities when enacting restrictions to curb the spread of COVID-19.
    - Providing a template that states, tribes, localities, water utilities, and technical assistance providers can use to provide documentation to workers that are considered essential.
    - Working with the water sector and FEMA to coordinate shipments of reusable cloth masks to drinking water and wastewater utilities, including tribal utilities. More than 2.7 million of over 3 million cloth masks requested have been provided.
  - Chemical supply chain
    - Supporting the water sector to identify potential materials and supply chain challenges and identify solutions to fill potential gaps.
    - For example, the EPA provided information on food grade CO<sub>2</sub> (used to balance pH) suppliers and producers in the event that water utilities need to identify alternative companies, pursuant to Section 1442(a)(2) of the Safe Drinking Water Act.
  - Financial resources
    - Providing information to States on aspects of the Drinking Water and Clean Water State Revolving Fund programs that can be used to assist borrowers under financial stress.



- Compliance assistance
  - Providing information to help drinking water systems identify alternative certified or accredited labs, if needed, that may be recognized by their state; and to identify alternatives to address diminished capacity at many state and federal labs.
  - Working with state and local authorities to provide guidance to the animal agriculture sector on reasonable measures for handling animal mortality and excess milk disposal.
- Examples of other EPA actions
  - Developing and maintaining information that the water sector can use to support operations (e.g., the new Pandemic Incident Action Checklist).
  - Developing a public service announcement to amplify the message discouraging flushing of materials other than toilet paper.
- The EPA is now providing important information to assist in the reopening of America and on May 8 released guidance on Maintaining Water Quality in Buildings with Low or no Use. Building and business closures for weeks or months reduce water usage, potentially leading to stagnant water inside building plumbing. This stagnant water can become unsafe to drink or otherwise use for personal or commercial purposes.

### **TALKING POINTS:**

- Having fully operational drinking water and wastewater services is critical to containing COVID-19 and protecting Americans from other public health risks, and we have been providing important information about COVID-19 to provide clarity to the public.
- EPA has been working closely with the water sector, states, and tribes to listen to their needs and identify opportunities for the Agency to provide support. We are actively providing technical support and resources to ensure the water sector can continue to provide vital resources for communities.
- I have held teleconferences with water sector stakeholders, including small and rural operators, to acknowledge the importance of their work and identify ways that EPA can support the sector.
- Underscoring what I heard in these meetings, I sent letters to governors in all 50 states, territories, and tribes requesting that water and wastewater workers, as well as manufacturers and suppliers providing vital services and materials to the water sector, are considered essential by state and local authorities
- As our nation moves toward reopening, we are remaining vigilant to ensure that Americans can continue to use and drink water from their tap as usual. EPA recently provided information that building owners, building managers, and businesses should use to address drinking water quality prior to reopening.
- I want to thank the water sector for their courageous efforts at a time when workforces are being challenged and stretched. Our nation's water and wastewater employees are everyday heroes who are on the frontline of protecting human health and the environment every single day.



Message

**From:** McDonough, Owen [mcdonough.owen@epa.gov]  
**Sent:** 5/21/2020 8:31:57 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_05-12-20\_AW\_OM.docx

DRAFT / DELIBERATIVE

Greg, I've added my edits / bubble responses on top of Anna's edits.

Owen

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**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Thursday, May 21, 2020 2:33 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Greg, here are my reactions/edits. Let me know if you have any questions.

Thanks,  
Anna

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**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Tuesday, May 19, 2020 4:50 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion, Ex. 5 Deliberative Process (DP) but please review the other questions to see if you are ok with the interagency comments. In addition to Ex. 5 Deliberative Process (DP) the other big decision point is Ex. 5 Deliberative Process (DP) See which questions are yours to review below.



1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.
2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 2/3/2020 10:10:29 PM  
**To:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Tovar, Katlyn [tovar.katlyn@epa.gov]  
**CC:** Kramer, Jessica L. [kramer.jessical@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Attachments:** Region 10 Hot Topics-gs.OWM.docx; Region 1 Hot Topics-gs.OWM.docx

OWM's comments.

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**From:** Sylvester, Francis <Sylvester.Francis@epa.gov>  
**Sent:** Friday, January 31, 2020 12:04 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Risley, David <Risley.David@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>  
**Subject:** RE: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events

Greg,

Just a couple of minor edits from OWM on the R1 and R10 entries. There was a sentence in the R1 entry on MS4 permit settlement that related to impaired waters. I made a proposed edit there – flagging for Stephanie just in case it was overlooked.

Frank Sylvester  
U.S. Environmental Protection Agency  
Office of Wastewater Management  
Desk: (202) 564-1279  
Mobile: Ex. 6 Personal Privacy (PP)  
[sylvester.francis@epa.gov](mailto:sylvester.francis@epa.gov)

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Thursday, January 30, 2020 9:55 AM  
**To:** Santell, Stephanie <Santell.Stephanie@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Sylvester, Francis <Sylvester.Francis@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Risley, David <Risley.David@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Vazquez, Sharon <Vazquez.Sharon@epa.gov>  
**Subject:** DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Special assistants,

Thank you for completing the recent drill where your office developed inserts per state on hot topics in order to prepare the Administrator for several upcoming events with Governors.

OW now has the opportunity to review the inserts submitted by the Regions. What we are looking for is for your SMEs to be a second set of eyes on these bullets to ensure they are accurate and consistent with the messaging HQ has used. I put an \* next to the hot topics I think need an extra look. Topics without an \* are ones I read and, according to my judgment, seemed accurate and consistent with messaging.



The window for your review is now until noon tomorrow. Please make edits to the word documents. Thanks for reviewing! OW IO will need Monday to review what you all submit. Our feedback is due to OCIR on 2/3.

Please reply to me to confirm receipt of this email.

Joe and Erica W - I plan to make the overall comment that whenever PFAS is mentioned, the Region should be specific about which type of PFAS. They should say PFOA or PFOS and not use the general term PFAS when the specific analyte is known.

Here is a table of contents showing the water hot topics identified.

- Region 1
  - Great Bay Draft Permit
  - MS4 settlement
- Region 4
  - Lake Okeechobee\*
  - HABs\*
  - Yazoo
  - Wet Mine Assets Holding, LLC Clean Water Act Section 404 Enforcement Matter\*
- Region 5
  - Michigan Lead and Copper Rule (LCR)
  - MI Action on PFAS
  - Flint Drinking Water
  - Indiana WIFIA loan
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  - AZ- Mex Border funding
  - Northern Mariana Islands - Typhoon Yutu Recovery Efforts, water infrastructure funding, PFOA levels in DW above HA\*
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  - HI – contamination of a drinking water aquifer
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  - WA – Human Health WQC, 401, PFAS at Whidbey Island, Col. River TMDL (summary looks accurate), Columbia River Basin Restoration Program, Puget sound NEP, Puget sound no discharge zone, 401, small system compliance metric



- AK – to be handled by OW IO

---

**From:** Carter, Brittany S. <carter.brittanys@epa.gov>

**Sent:** Wednesday, January 29, 2020 12:42 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

**Cc:** Pic, Jordan <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Attached are the hot topics we received from the regions. (For those paying close attention, R7 said they did not have any work worth flagging for KS & NE.)

If you could please take a look and send back edits by **COB this Friday, 1/31** (at the latest 9am Monday, 2/3) we'd appreciate it. **Please track your edits** (this will help with version control and making sure all edits make the cut).

Please let us know if you have any questions.

Thanks again!

Best regards,

-Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 3:12 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>

**Cc:** Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi everyone,

Sent the below email out to the regions today. Wanted to flag for your offices too. Summary of the below email: The Western Governors' Association is hosting breakfast meeting with cabinet officials & governors on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues or updated briefing papers that apply to these states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). One pagers are okay for the larger issues (I'll include them as attachments to the briefing.)

Know the is twofold for you—once I have the updated information from the regions I will send to you as well to avoid any discrepancies.

Thank you and please let me know if you have any questions or suggestions.

Best regards,



Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 1:09 PM

**To:** Regional Public Affairs Directors <Regional\_Public\_Affairs\_Directors@epa.gov>; Tapp, Joshua  
<Tapp.Joshua@epa.gov>

**Cc:** Bowles, Jack <Bowles.Jack@epa.gov>; Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>; Richardson, RobinH  
<Richardson.RobinH@epa.gov>

**Subject:** Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Happy New Year!

The Western Governors' Association is hosting breakfast meeting with cabinet officials on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues for your states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). (As you can see some issues were much longer than requested—please use your best judgement.) Thanks in advance. (Later on 02/09, there is a dinner with all governors—there is potential for more states—will circle back but can start here for now.)

**The WGA states:**

Region 6: TX, OK, NM

Region 7: NE, KS

Region 8: ND, SD, MT, WY, UT, CO

Region 9: CA, NV, AZ, HI, Guam, AS, NMI

Region 10: WA, OR, ID, AK

**Dinner:**

Region 1: NH

Region 4: FL, MS, GA

Region 5: OH, IN, MI

Please let me know if you have any questions. Thank you!

Best regards,

Britt

Britt Carter

Director of Intergovernmental Relations

U.S. Environmental Protection Agency



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 1/22/2020 12:24:28 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Re: Yazoo - next steps

Sure. Could we try for 11? If that doesn't work, I have noon-1 as well.

Sent from my iPhone

On Jan 22, 2020, at 7:12 AM, Walker, Mary <walker.mary@epa.gov> wrote:

I'm available between 8-9:30, at 11, 12-1:30, and at 5:30 or later.

David, do any of these windows work for you?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 6:53 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone

On Jan 21, 2020, at 7:29 PM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.



Thanks,  
Mary

<image002.png>

Mary Salmon Walker   Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 2/11/2020 12:23:30 AM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo Briefing paper - for review.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF (002).docx

Edits made and ready for transmission.

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Monday, February 10, 2020 6:35 PM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Re: Yazoo Briefing paper - for review.

We will make those changes and send it to RJ first thing in the morning.

Sent from my iPhone

On Feb 10, 2020, at 5:47 PM, Walker, Mary <walker.mary@epa.gov> wrote:

My only comment would be	<b>Ex. 5 Deliberative Process (DP)</b>	Ex. 5 Deliberative Process (DP)
	<b>Ex. 5 Deliberative Process (DP)</b>	??

Thanks,  
Mary

Sent from my iPhone

On Feb 10, 2020, at 4:53 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

DELIBERATIVE

With my edits tracked in the attached for your consideration.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Sent:** Monday, February 10, 2020 3:19 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.

Draft/Deliberative/Confidential



Dear All,

Per Lee's request, please find attached a Yazoo briefing paper for your review. Please provide edits and comments.

Thanks!,  
Mel

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Phone: (202) 564-6512  
Mobile: Ex. 6 Personal Privacy (PP)  
Email: [mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)

<R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx>



Message

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**From:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Sent:** 2/3/2020 10:10:26 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; Tovar, Katlyn [tovar.katlyn@epa.gov]  
**CC:** Kramer, Jessica L. [kramer.jessical@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events

Thanks. Is Region 10's the only one we have input on or should we expect more emails from you?

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Monday, February 03, 2020 4:44 PM  
**To:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Tovar, Katlyn <tovar.katlyn@epa.gov>  
**Cc:** Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** FW: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Charlotte and Katie,

To be clear, we already turned in our main task, which was a list of hot topics. I am attaching that.

This drill is about getting OW's comments on the regional submissions.

Like I said on the phone. There are 3 sets of input from OWOW, OWM, and OST. My email below shows the OW topics per region. Here is OWOW's input. The other two will follow.

---

**From:** Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Sent:** Friday, January 31, 2020 11:25 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Orvin, Chris <Orvin.Chris@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Greg,

We have reviewed the regional materials according to OWOW relevant topics. Please see our minor but important edits in the attachment related to 303d issues in R10.

Other comments are as follows:

- Region 8, Barrasso letter on NARs duplication with 305(b): We could note that EPA is preparing a response that clarifies the complementary, not duplicative, nature of the national rivers and streams survey and the state monitoring and reporting efforts. EPA is also emphasizing its ongoing commitment to work with states to maximize opportunities to coordinate and optimize the national surveys with state monitoring.
- No issues on the other hot topics (WOTUS, 401, Yazoo entries, etc.).

Let me know if you have questions. Thank you!

Stephanie



---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>

**Sent:** Thursday, January 30, 2020 9:55 AM

**To:** Santell, Stephanie <Santell.Stephanie@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Sylvester, Francis <Sylvester.Francis@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>

**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Risley, David <Risley.David@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Vazquez, Sharon <Vazquez.Sharon@epa.gov>

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Joe and Erica W - I plan to make the overall comment that whenever PFAS is mentioned, the Region should be specific about which type of PFAS. They should say PFOA or PFOS and not use the general term PFAS when the specific analyte is known.

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- Region 10
  - ID – ID becoming authorized to issue NPDES permits, Water quality standards\*, Columbia River Basin Restoration Program, 401, small system compliance metric
  - OR – Col. River TMDL (summary looks accurate), Klamath TMDL\*, Willamette TMDL, reviewing the state run NPDES program, Columbia River Basin Restoration Program, OR 2012 impaired waters list, Liquified Natural Gas Pipeline Project, 401, small system compliance metric, 404 assumption.
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---

**From:** Carter, Brittany S. <carter.brittany@epa.gov>

**Sent:** Wednesday, January 29, 2020 12:42 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

**Cc:** Pic, Jordan <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi all,

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Thanks again!

Best regards,

-Britt

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**Sent:** Tuesday, January 7, 2020 3:12 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory,



Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>

**Cc:** Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

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Know the is twofold for you—once I have the updated information from the regions I will send to you as well to avoid any discrepancies.

Thank you and please let me know if you have any questions or suggestions.

Best regards,

Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 1:09 PM

**To:** Regional Public Affairs Directors <Regional\_Public\_Affairs\_Directors@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>

**Cc:** Bowles, Jack <Bowles.Jack@epa.gov>; Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>

**Subject:** Request for Hot Topics: WGA Breakfast 2/9

Hi all,

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The Western Governors' Association is hosting breakfast meeting with cabinet officials on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues for your states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). (As you can see some issues were much longer than requested—please use your best judgement.) Thanks in advance. (Later on 02/09, there is a dinner with all governors—there is potential for more states—will circle back but can start here for now.)

**The WGA states:**

Region 6: TX, OK, NM

Region 7: NE, KS

Region 8: ND, SD, MT, WY, UT, CO

Region 9: CA, NV, AZ, HI, Guam, AS, NMI

Region 10: WA, OR, ID, AK

**Dinner:**

Region 1: NH

Region 4: FL, MS, GA



Region 5: OH, IN, MI

Please let me know if you have any questions. Thank you!

Best regards,

Britt

Britt Carter  
Director of Intergovernmental Relations  
U.S. Environmental Protection Agency



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 3/17/2020 1:26:53 AM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]  
**Subject:** Re: Yazoo

I think it's a great idea and would be very helpful to demonstrate that we do take this seriously. I think we need to get him ready - get ourselves ready on game plan before that call.

Sent from my iPhone

> On Mar 16, 2020, at 6:26 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>

> Mary

>

> Per Dave's suggestion why don't we have the Administrator call her?

> Lee

>

> Sent from my iPhone

>

>> On Mar 16, 2020, at 6:08 PM, walker, Mary <walker.mary@epa.gov> wrote:

>>

>> If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

>>

>> -----Original Message-----

>> From: Forsgren, Lee <Forsgren.Lee@epa.gov>

>> Sent: Monday, March 16, 2020 6:00 PM

>> To: Ross, David P <ross.davidp@epa.gov>

>> Cc: Walker, Mary <walker.mary@epa.gov>

>> Subject: Re: Yazoo

>>

>> Will cover it if OCIR can't get it postponed.

>>

>> Sent from my iPhone

>>

>>>> On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:

>>>>

>>>> Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

>>>>

>>>> Thanks.

>>>>

>>>>

>>>>

>>>> Sent from my iPad



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 6/5/2020 12:28:54 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Yazoo NEPA comment timeline

Hi Lee and David,

We have a couple of upcoming deadlines on the Yazoo NEPA comments. Our comments on the modeling are due on 6/12 – so I have asked staff to get these to us for review by 6/10 (Wednesday). Scoping comments are due 6/15, so staff will get these to us by 6/12 (Friday). Staff level coordination among our offices should already have happened by the time we get them.

I wanted to get these dates on your radar – and I'll send up the drafts as soon as I receive them.

I hope you both have a great weekend,  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 1/22/2020 12:12:00 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: Yazoo - next steps

I'm available between 8-9:30, at 11, 12-1:30, and at 5:30 or later.

David, do any of these windows work for you?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 6:53 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone

On Jan 21, 2020, at 7:29 PM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.

Thanks,

Mary



<image002.png>

Mary Salmon Walker   Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

**From:** McDonough, Owen [mcdonough.owen@epa.gov]  
**Sent:** 5/21/2020 6:59:37 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT / DELIBERATIVE

I'll add my edits to Anna's. Will pass back soon.

Owen

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Thursday, May 21, 2020 2:33 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Greg, here are my reactions/edits. Let me know if you have any questions.

Thanks,

Anna

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Tuesday, May 19, 2020 4:50 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion,

**Ex. 5 Deliberative Process (DP)** but please review the other questions to see if you are ok with the interagency comments. In addition to, the other big decision point is **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** See which questions are yours to review below.

1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.



2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

---

**From:** Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Sent:** 2/11/2020 12:22:03 AM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20jlk.docx

Some redlines from me as well. Thanks,

Jess

Jessica L. Kramer  
Senior Counsel for the Assistant Administrator  
U.S. Environmental Protection Agency – Office of Water  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C.  
Kramer.jessical@epa.gov  
(202) 564-6322

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Monday, February 10, 2020 2:40 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20.docx

Greg, some redline edits to the QFRs. I assume Charlotte and Lee reviewed the blending questions?  
Thanks



Message

---

**From:** Wildeman, Anna [wildeman.anna@epa.gov]  
**Sent:** 5/21/2020 6:55:44 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

For OGC staff its Lauren Maher, but Fotouhi needs to clear anything staff writes before it comes back to me.

Thanks

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Thursday, May 21, 2020 2:55 PM  
**To:** Wildeman, Anna <wildeman.anna@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
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**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Thanks. Who is the best OGC contact for DHC? Also,

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

---

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**Sent:** Thursday, May 21, 2020 2:33 PM  
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Anna

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**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)



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9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



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## **Member Bios**

### Senate Committee on Environment and Public Works

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Senator Jim Inhofe .....	EPWREP-2
Senator Shelley Moore Capito .....	EPWREP-3
Senator Kevin Cramer.....	EPWREP-4
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Senator Dan Sullivan .....	EPWREP-7
Senator John Boozman .....	EPWREP-8
Senator Roger Wicker .....	EPWREP-9
Senator Richard Shelby.....	EPWREP-10
Senator Joni Ernst .....	EPWREP-11

Ranking Member Tom Carper .....	EPWDEM-1
Senator Ben Cardin .....	EPWDEM-2
Senator Bernie Sanders .....	EPWDEM-3
Senator Sheldon Whitehouse .....	EPWDEM-4
Senator Jeff Merkley .....	EPWDEM-5
Senator Kirsten Gillibrand .....	EPWDEM-6
Senator Cory Booker.....	EPWDEM-7
Senator Ed Markey .....	EPWDEM-8
Senator Tammy Duckworth.....	EPWDEM-9
Senator Chris Van Hollen .....	EPWDEM-10



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 2/3/2020 9:43:41 PM  
**To:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Tovar, Katlyn [tovar.katlyn@epa.gov]  
**CC:** Kramer, Jessica L. [kramer.jessical@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Attachments:** Region 10 Hot Topics-gs CH.docx; hot\_topics\_inserts\_ow\_wga\_bkfst\_wh\_dinner\_01-29-20.docx

**Importance:** High

Charlotte and Katie,

To be clear, we already turned in our main task, which was a list of hot topics. I am attaching that.

This drill is about getting OW's comments on the regional submissions.

Like I said on the phone. There are 3 sets of input from OWOW, OWM, and OST. My email below shows the OW topics per region. Here is OWOW's input. The other two will follow.

---

**From:** Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Sent:** Friday, January 31, 2020 11:25 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Orvin, Chris <Orvin.Chris@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Greg,

We have reviewed the regional materials according to OWOW relevant topics. Please see our minor but important edits in the attachment related to 303d issues in R10.

Other comments are as follows:

- ## Ex. 5 Deliberative Process (DP)
- 

Let me know if you have questions. Thank you!

Stephanie

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Thursday, January 30, 2020 9:55 AM  
**To:** Santell, Stephanie <Santell.Stephanie@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Sylvester, Francis <Sylvester.Francis@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Risley, David <Risley.David@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Vazquez, Sharon



**Subject:** DEADLINE: noon 1/31 - Review Hot Topics submitted by the Regions for the upcoming Governor events  
**Importance:** High

Thank you for completing the recent drill where your office developed inserts per state on hot topics in order to prepare the Administrator for several upcoming events with Governors.

The window for your review is now until noon tomorrow. Please make edits to the word documents. Thanks for reviewing! OW IO will need Monday to review what you all submit. Our feedback is due to OCIR on 2/3.

Joe and Erica W - I plan to make the overall comment that whenever PFAS is mentioned, the Region should be specific about which type of PFAS. They should say PFOA or PFOS and not use the general term PFAS when the specific analyte is known.

## Ex. 5 Deliberative Process (DP)



# Ex. 5 Deliberative Process (DP)

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**From:** Carter, Brittany S. <carter.brittany@epa.gov>

**Sent:** Wednesday, January 29, 2020 12:42 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

**Cc:** Pic, Jordan <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Attached are the hot topics we received from the regions. (For those paying close attention, R7 said they did not have any work worth flagging for KS & NE.)

If you could please take a look and send back edits by **COB this Friday, 1/31** (at the latest 9am Monday, 2/3) we'd appreciate it. **Please track your edits** (this will help with version control and making sure all edits make the cut).

Please let us know if you have any questions.

Thanks again!

Best regards,

-Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 3:12 PM

**To:** Hoverman, Taylor <hoverman.taylor@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>

**Cc:** Pic, Jordan (pic.jordan@epa.gov) <pic.jordan@epa.gov>

**Subject:** FW: Request for Hot Topics: WGA Breakfast 2/9

Hi everyone,



Sent the below email out to the regions today. Wanted to flag for your offices too. Summary of the below email: The Western Governors' Association is hosting breakfast meeting with cabinet officials & governors on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues or updated briefing papers that apply to these states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). One pagers are okay for the larger issues (I'll include them as attachments to the briefing.)

Know the is twofold for you—once I have the updated information from the regions I will send to you as well to avoid any discrepancies.

Thank you and please let me know if you have any questions or suggestions.

Best regards,

Britt

---

**From:** Carter, Brittany S.

**Sent:** Tuesday, January 7, 2020 1:09 PM

**To:** Regional Public Affairs Directors <[Regional\\_Public\\_Affairs\\_Directors@epa.gov](mailto:Regional_Public_Affairs_Directors@epa.gov)>; Tapp, Joshua <[Tapp.Joshua@epa.gov](mailto:Tapp.Joshua@epa.gov)>

**Cc:** Bowles, Jack <[Bowles.Jack@epa.gov](mailto:Bowles.Jack@epa.gov)>; Pic, Jordan ([pic.jordan@epa.gov](mailto:pic.jordan@epa.gov)) <[pic.jordan@epa.gov](mailto:pic.jordan@epa.gov)>; Richardson, RobinH <[Richardson.RobinH@epa.gov](mailto:Richardson.RobinH@epa.gov)>

**Subject:** Request for Hot Topics: WGA Breakfast 2/9

Hi all,

Happy New Year!

The Western Governors' Association is hosting breakfast meeting with cabinet officials on February 9<sup>th</sup>. To prepare the Administrator's briefing book, please send Jordan (cc'd) and me any hot issues for your states by **COB Tuesday, Jan. 28**. We're looking for very high-level issues, max 1-2 sentences each. See attached for formatting examples (these are from last year). (As you can see some issues were much longer than requested—please use your best judgement.) Thanks in advance. (Later on 02/09, there is a dinner with all governors—there is potential for more states—will circle back but can start here for now.)

**The WGA states:**

Region 6: TX, OK, NM

Region 7: NE, KS

Region 8: ND, SD, MT, WY, UT, CO

Region 9: CA, NV, AZ, HI, Guam, AS, NMI

Region 10: WA, OR, ID, AK

**Dinner:**

Region 1: NH

Region 4: FL, MS, GA

Region 5: OH, IN, MI

Please let me know if you have any questions. Thank you!

Best regards,



Britt

Britt Carter

Director of Intergovernmental Relations

U.S. Environmental Protection Agency



Message

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 5/21/2020 6:54:30 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Thanks. Who is the best OGC contact for DHC? Also Ex. 5 Deliberative Process (DP)  
Ex. 5 Deliberative Process (DP)

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**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Thursday, May 21, 2020 2:33 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

DRAFT; DELIBERATIVE

Greg, here are my reactions/edits. Let me know if you have any questions.

Thanks,  
Anna

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Tuesday, May 19, 2020 4:50 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion, Ex. 5 Deliberative Process (DP) but please review the other questions to see if you are ok with the interagency comments. In addition to Ex. 5 Deliberative Process (DP) the other big decision point is Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) See which questions are yours to review below.

1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.



2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 2/10/2020 10:47:26 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Re: Yazoo Briefing paper - for review.

My only comment would be to question the second sentence in fourth bullet re: **Ex. 5 Deliberative Process (DP)**  
**Ex. 5 Deliberative Process (DP)** ??

Thanks,  
Mary

Sent from my iPhone

On Feb 10, 2020, at 4:53 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

DELIBERATIVE

With my edits tracked in the attached for your consideration.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Sent:** Monday, February 10, 2020 3:19 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.

Draft/Deliberative/Confidential

Dear All,

Per Lee's request, please find attached a Yazoo briefing paper for your review. Please provide edits and comments.

Thanks!,  
Mel

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Phone: (202) 564-6512



Mobile: Ex. 6 Personal Privacy (PP)  
Email: [melias.melissa@epa.gov](mailto:melias.melissa@epa.gov)

<R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx>



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 5/27/2020 8:21:49 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** For Dave's review - responses to interagency comments on EPA responses to September T&I hearing QFRs (Ross)  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_05-27-20.docx

Internal/Deliberative

Janita,

As discussed at staff meeting yesterday, attached are responses to OMB/interagency comments on Dave responses to the QFRs from the Sept 2019 T&I hearing in redline. The major updates are to DHC/Maui on page 9 and CWA 311 from OLEM on page 13. The rest of the comments are minor. The responses were cleared according to the following assignments. Once Dave clears, OCIR will send back to OMB and once OMB clears, these can go to T&I through OCIR. If 401 goes final in the near term, we can easily update with edits I already have from Anna.

1. DeFazio WOTUS (pages 1-6) – Owen
2. DeFazio DHC (pages 8 and 9) – Fotouhi (Anna asked for OGC to update)
3. DeFazio Blending (page 9 and 10) – Charlotte
4. DeFazio PFAS (pages 10 and 11) – Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna
6. DeFazio Yazoo (pages 12 and 13) – Lee
7. Fletcher CWA 311 (pages 13 and 14) - OLEM
8. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen
9. Johnson 3 401 (page 16) – Anna
10. Graves 1 – WA WQS (pages 16 and 17) – Anna

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 4/8/2020 1:24:06 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Do I need to ask Denis to move this? It looks like 3pm would work.

-----  
**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below  
  
**Start:** Wed 4/8/2020 11:30 AM  
**End:** Wed 4/8/2020 12:00 PM  
  
**Recurrence:** (none)  
  
**Meeting Status:** Accepted  
  
**Organizer:** Borum, Denis  
**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert); Knapp, Kristien  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)

Conference ID: Ex. 6 Personal Privacy (PP)



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 3/16/2020 10:08:17 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Ross, David P [ross.davidp@epa.gov]  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <Forsgren.Lee@epa.gov>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <ross.davidp@epa.gov>  
Cc: Walker, Mary <walker.mary@epa.gov>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

> On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:  
>  
> Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.  
>  
> Thanks.  
>  
>  
>  
> Sent from my iPad



## Budget Hearing Fact Sheets

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Senator Jeff Merkley .....	SACDEM-6
Senator Chris Van Hollen .....	SACDEM-7



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 1/22/2020 12:29:13 AM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Yazoo - next steps

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.

Thanks,

Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

**From:** Wildeman, Anna [wildeman.anna@epa.gov]  
**Sent:** 5/21/2020 6:32:37 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Reed, Kristen [Reed.Kristen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)  
**Attachments:** ow\_response\_omb\_passback\_qfr\_responses\_ross\_house\_tandl\_09-18-19\_cwa\_hearing\_05-12-20\_AW.docx

DRAFT; DELIBERATIVE

Greg, here are my reactions/edits. Let me know if you have any questions.

Thanks,

Anna

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Tuesday, May 19, 2020 4:50 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Reed, Kristen <Reed.Kristen@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** respond to interagency comments on EPA responses to September T&I hearing QFRs (Ross)

Internal/Deliberative

Owen, Anna, Lee, Jess, and Charlotte,

As I mentioned at staff meeting yesterday, attached are interagency comments on our responses to the QFRs from Dave's September 2019 T&I hearing. We need to get back to OMB with our responses. However, in my opinion, Ex. 5 Deliberative Process (DP) but please review the other questions to see if you are ok with the interagency comments. In addition to Ex. 5 Deliberative Process (DP) the other big decision point is Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) See which questions are yours to review below.

1. DeFazio WOTUS (pages 1-6) – Owen – please review my proposed responses and see the places I flagged in a bubble that need your input.
2. DeFazio DHC (pages 8 and 9) – Anna – I propose a simple footnote, but let me know if you think something more is needed in light of Maui decision.
3. DeFazio Blending (page 9 and 10) – Lee/Charlotte – only very minor edits
4. DeFazio PFAS (pages 10 and 11) – Jess/Charlotte – only very minor edits
5. DeFazio 401 (pages 11 and 12) – Anna/Jess – will need to be revised post signature
6. DeFazio Yazoo (pages 12 and 13) – Lee – please review and let me know if ok w/ OMB edits
7. Johnson 1 and 2 WOTUS (pages 15 and 16) – Owen – one minor edit
8. Johnson 3 401 (page 16) – Anna/Jess – will need to be revised post signature
9. Graves 1 – WA WQS (pages 16 and 17) – Anna – minor edits



Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 2/10/2020 9:53:11 PM  
**To:** Mejias, Melissa [mejias.melissa@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo Briefing paper - for review.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx

DELIBERATIVE

With my edits tracked in the attached for your consideration.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Sent:** Monday, February 10, 2020 3:19 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.

Draft/Deliberative/Confidential

Dear All,

Per Lee's request, please find attached a Yazoo briefing paper for your review. Please provide edits and comments.

Thanks!,  
Mel

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Phone: (202) 564-6512  
Mobile: Ex. 6 Personal Privacy (PP)  
Email: [mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)



Message

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**From:** McDonough, Owen [mcdonough.owen@epa.gov]  
**Sent:** 2/10/2020 9:13:06 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20\_OM.docx

Some edits on top of Anna's edits.

Owen

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Monday, February 10, 2020 2:40 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20.docx

Greg, some redline edits to the QFRs. I assume Charlotte and Lee reviewed the blending questions?  
Thanks



Message

---

**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 3/4/2020 10:49:44 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 3.9.2020.docx

Please see our weekly report and let us know if any questions. Congrats on a successful February Water month and looking forward to the March Chemicals month. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP)

 (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides and Toxics Team**  
**Week of March 9, 2020**

**NEW:**

Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSPP, R4 (Sven)  
House Ag – briefing call request on PRIA fees w/OCSPP (Sven)  
Sen. Whitehouse (RI) question on lead abatement costs w/OCSPP (Sven)  
Rep. Rouzer (NC) constituent inquiry re: well water w/R4 (Matt)  
SEPW TA request on drinking-water provisions of draft WRDA w/OW (Matt)  
Senate Indian Affairs TA request on Indian reservation drinking water grant program w/OW (Matt)  
Rep. Perry (PA) + three letter on Chesapeake Bay water treatment method w/OW (Denis)  
Rep. Latta (OH) inquiry constituent inquiry re: SDWA Tier II notifications w/OW, R5 (Matt)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

**Feb 27** – Rep. Cramer (ND) staff question re: Navigable Waters Rule & existing jurisdictional determinations (Denis/Holt)  
**Feb 28** – Approps staff call re: 45(q) tax credit and SDWA UIC Class VI w/OW (Holt/Matt)  
**Feb 28** – House T&I request re: impact of H.R. 5628 allotment bill (Matt)  
**Feb 28** – Transmittal of final Dave Ross PFAS QFRs to Senate EPW (Matt)  
**Feb 28** – Sen. Gillibrand (NY) staff call on constituent's mosquito repellent w/OCSPP, R2 (Sven)  
**Mar 2** – Response to CRS re: status of PFAS under UCMR 5 (Matt)  
**Mar 2** – Notification on chemical safety month w/OCSPP (Sven)  
**Mar 2** – Notification on PV29 TSCA Section 4 Test Order w/OCSPP (Sven)  
**Mar 3** – Rep. Dean (PA) question re: status of PFAS RegDet FR publication (Matt)  
**Mar 3** – Sen. Murkowski (AK) inquiry re: PFAS testing in fish and game w/OW, ORD (Matt/Tony)  
**Mar 3** – Rep. Calvert (CA) followup information on animal testing w/OCSPP (Sven)  
**Mar 4** – Rep. Trahan (MA) question re: CWA Sec. 221 sewer grant status w/OW (Matt)  
**Week of Mar 9** – Rep. Kaptur (OH) staff briefing on HABs program w/OW (Denis)  
**May TBD** – House Science briefing request on HABs w/ORD, OW (Demond/Denis)  
**Pending** – Sen. Hirono (HI) briefing request on alternative pathogen indicators w/OW (Denis)  
**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)  
**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)  
**Pending** – Rep. Meuser (PA) stormwater questions w/R3, OW (Denis)  
**Pending** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)  
**Pending** – HEC (min) – TA request on TSCA new chemicals program w/OCSPP (Sven)  
**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSPP (Sven)  
**Pending** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSPP (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/ OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – Rep. Cuellar (TX) inquiry on USMCA border water funding w/OW, OITA (ACC team, Matt)  
**Pending** – PFAS briefings for House Approps and House Science w/cross-HQ team (Matt)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Sven)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Sven)



## HEARINGS/FORUMS:

Topic: [ HYPERLINK "https://appropriations.house.gov/events/hearings/us-environmental-protection-agency-budget-request-for-fy2021" ]  
Committee: House Appropriations, Subcommittee on Interior and Environment  
Date: Wednesday, March 4, 2020 at 9:30 am  
EPA Witness: Administrator Andrew Wheeler  
Contact: Tony Frye/JohnMark Kolb

Topic: EPA FY2021 Budget  
Committee: House Transportation & Infrastructure, Subcommittee on Water Resources & Env't  
Date: Tues, March 31, 2020  
EPA Witness: Charlotte Bertrand (DAA OW) and Barry Breen (DAA OLEM)  
Contact: Denis Borum/Pamela Janifer

## 116<sup>th</sup> CONGRESS ENACTED LEGISLATION:

[ **HYPERLINK**  
**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billIsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1"** ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)

[ **HYPERLINK**  
**"https://www.congress.gov/bill/116th-congress/senate-bill/1689"** ]/PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)

[ **HYPERLINK**  
**"https://www.congress.gov/bill/116th-**

[ PAGE \\* MERGEFORMAT ]



**congress/senate-bill/1790" ]/PL 116-92 – Inhofe (OK), NDAA w/PFAS provisions on TSCA and TRI, Signed on Dec 20 (Matt)**

116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-**

**congress/house-bill/535" ] – Dingell (MI), requires EPA to declare**

PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10 (Matt)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-**

**congress/house-bill/729/" ] – Kilmer (WA), Coastal and Great Lakes**

Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-**

**congress/house-bill/925/" ] – Barrasso (WY), America's Conservation**

Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed House Nov 20, Amended and passed Senate via unanimous consent Jan 9 (Denis, Sven)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-**

**congress/house-bill/1331" ] – Speier (CA), San Francisco Bay Restoration**

Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-**



**congress/house-bill/1603/text" ]** – Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **Introduced Mar 7, HEC hearing May 8, Passed HEC Nov 19** (Sven)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/1620/text" ]** – Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/2247" ]** – Heck (WA), Promoting United Government Efforts To Save Our Sound Act ("PUGET SOS Act"). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound. **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4031" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5** (Denis)



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/4891/text>" ]**

– Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28** (Matt),

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5347/>" ]**

– Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5799>" ]**

– Peterson (MN), Bridging Responsible



Agricultural Conservation Efforts Act, Clarifies EPA, Corps, and USDA wetlands regulations, and requires "normal farming practices" rulemaking, **Introduced Feb 7** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5856>" ]**

– Sewell (AL), Decentralized Wastewater Grant Act, Creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as S. 3274, **Introduced Feb 11** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/5857>" ]**

– Ocasio-Cortez (NY), Fracking Ban Act, Bans hydraulic fracturing operations beginning in 2025, Same as S. 3247, **Introduced Feb 12** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/house-bill/5902/text>" ] – Mast (FL), MICRO Plastics Act, Creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as S. 3306, **Introduced Feb 13** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (likely identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, Introduced Jan 3, **Passed Senate Commerce Nov 13** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)

[ PAGE \\* MERGEFORMAT ]



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1982>" ]** – Sullivan (AK), Save Our Seas 2.0 Act, Amended and passed Senate via unanimous consent Jan 9 (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2353>" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, OMB requested EPA views by Mar 4; may be hotlined in the Senate this week (Matt)

[ **HYPERLINK**

**"<https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf>" ]** – Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, introduced Sept 19, Passed Senate Commerce Nov 13 (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/2799/>" ]** – Murkowski (AK), Nexus of Energy and Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, Reported to Senate Dec 17 (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3051>" ]** – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9 (Denis, Sven)

[ **HYPERLINK**

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/senate-bill/3211" ]** – Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3221>" ] – Booker (NJ), Farm System Reform Act, Bans large CAFOS and makes integrators liable for air & water discharges, **Introduced Jan 21** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/senate-bill/3274>" ]** – Booker (NJ), Decentralized Wastewater Grant Act, creates new CWA grant program to support decentralized wastewater system grants to low-income individuals, and removes AWIA reporting req't, Same as H.R. 5856, **Introduced Feb 11** (Matt)

[ HYPERLINK "<https://www.congress.gov/bill/116th-congress/senate-bill/3306/>" ] – Merkley (OR), MICRO Plastics Act, creates EPA pilot program on cleaning up and preventing microplastics pollution, including at water treatment facilities, Same as H.R. 5902, **Introduced Feb 13** (Denis)



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 3/16/2020 9:57:35 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo

Meeting is 1-2 on Thursday 3/19 in Senator Hyde Smith's office. Agenda to follow

-----Original Message-----

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Monday, March 16, 2020 5:42 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Yazoo

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

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**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 4:04:26 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Your calendar is booked solid for April 8<sup>th</sup>. Is there time that actually works?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:03 PM  
**To:** Borum, Denis <Borum.Denis@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Works for me.

---

**From:** Borum, Denis <Borum.Denis@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:02 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

I will look. I'll need to coordinate with approx. 12 other schedules, so the prep could end up even weeks further out.

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 11:52 AM  
**To:** Borum, Denis  
**Subject:** Tentative: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**When:** Wednesday, April 1, 2020 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** See Call-in number, below

How about like April 8<sup>th</sup>?



Message

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**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 2/10/2020 8:19:06 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Yazoo Briefing paper - for review.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx

Draft/Deliberative/Confidential

Dear All,

Per Lee's request, please find attached a Yazoo briefing paper for your review. Please provide edits and comments.

Thanks!,  
Mel

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Phone: (202) 564-6512  
Mobile: Ex. 6 Personal Privacy (PP)  
Email: mejias.melissa@epa.gov



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 3/16/2020 9:54:14 PM  
**To:** Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Yazoo

I just got of the phone with Major General Toy. He too has received instructions not to attend. He communicated that Gen. Spellman & Gen. Simmonite will be in attendance. I had him place me on the agenda as a phone participant and to tentatively put Lee on the meeting as in person. I will touch base with Lee. There are a lot of sensitivities here. Please let me know if we should all have a call.

-----Original Message-----

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Monday, March 16, 2020 5:42 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>  
**Subject:** Yazoo

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

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**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 2/10/2020 7:40:28 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: call if you have any edits.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx

Made a few grammatical changes.

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**From:** Mejias, Melissa  
**Sent:** Monday, February 10, 2020 2:25 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** call if you have any edits.



Message

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**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 3/16/2020 9:41:33 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]  
**Subject:** Yazoo

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Borum, Denis [Borum.Denis@epa.gov]  
**Sent:** 3/26/2020 4:01:54 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

I will look. I'll need to coordinate with approx. 12 other schedules, so the prep could end up even weeks further out.

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 11:52 AM  
**To:** Borum, Denis  
**Subject:** Tentative: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**When:** Wednesday, April 1, 2020 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** See Call-in number, below

How about like April 8<sup>th</sup>?





**National Wildlife Federation**

National Advocacy Center

1200 G Street NW, Suite 900 • Washington, DC 20005 • 202-797-6800

January 24, 2020

Via FOIAonline

National FOIA Office

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW (2310A)

Washington, DC 20460

Re: Freedom of Information Act Request—Yazoo Backwater Pumping Plant, Mississippi

Dear FOIA Officer:

This letter is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552. The National Wildlife Federation requests copies of the materials identified below relating to the Yazoo Backwater Area Pumps Project, Mississippi (the “Yazoo Pumps”).

The Environmental Protection Agency (EPA) issued a Clean Water Act 404(c) Final Determination prohibiting construction of the Yazoo Pumps on August 31, 2008.<sup>1</sup> However, during an April 3, 2019 hearing before the Senate Appropriations Subcommittee on Energy and Water Development, EPA Administrator Wheeler confirmed that EPA was reconsidering that 2008 Final Determination. As reported in the media, EPA engaged in at least the following Yazoo Pumps-related activities during the period covered by this Freedom of Information Act request: multiple meetings to discuss issues related to the Yazoo Pumps, at least one site visit to the Yazoo Pumps project area, and an October 21, 2019 public listening session on the Yazoo Pumps in Rolling Fork, Mississippi. As documented through a post and photograph on the U.S. Army Corps of Engineers’ Mississippi Valley Division Facebook page, EPA participated in a senior-level meeting with the Corps of Engineers to discuss the Yazoo Pumps on January 15, 2020. During this meeting, which was held in Atlanta, the Corps appears to have provided EPA with printed materials related to the Yazoo Pumps.

As used in this request, the term “Documents” means all records or written or printed materials, including letters, memoranda, analyses, studies, reports, meeting summaries,

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<sup>1</sup> *Final Determination Of The U.S. Environmental Protection Agency’s Assistant Administrator For Water Pursuant To Section 404(C) Of The Clean Water Act Concerning The Proposed Yazoo Backwater Area Pumps Project, Issaquena County, Mississippi.*



agendas, photographs, and any other relevant documentation, whether in draft or final form, or in the form of e-mail messages, documentation of telephone conversations, handwritten notes, and other mediums of communication.

The National Wildlife Federation requests the following Documents:

1. All studies, analyses, reports, assessments, or hydrologic models related to the Yazoo Pumps prepared by the U.S. Army Corps of Engineers and provided by the Corps of Engineers to EPA between January 1, 2019 and the present.<sup>2</sup>
2. All Documents evidencing any review or analysis by EPA of the Documents requested in paragraph 1, above.
3. All Documents evidencing communications related to the Yazoo Pumps from January 1, 2019 to the present between EPA and any of the following: (a) the U.S. Army Corps of Engineers, (b) any federal, state, or local governmental entities, or (c) any members of Congress.

Because the National Wildlife Federation is a non-profit organization, I request a waiver of any fees connected with this request pursuant to 5 U.S.C. § 552(a)(4)(A). This request is made in the public interest and the requested information can be considered as primarily benefiting the general public. The requested information will not be used for the financial or commercial benefit of the National Wildlife Federation.

The requested information will be used by the National Wildlife Federation to help evaluate and provide comments on any reconsideration of the Yazoo Pumps and for educating citizens and decision makers about the impacts of the Yazoo Pumps. Understanding these impacts and the methodology used to evaluate these impacts is clearly of interest to the public because the Yazoo Pumps will impact habitat that is essential to the nation's fish and wildlife resources, which are of fundamental concern to the public.

The following are some of the ways that the National Wildlife Federation may disseminate the requested information to the public and decision makers:

- Using information from the materials provided to develop comments, fact sheets and/or other documents discussing the potential impacts of the Yazoo Pumps;

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<sup>2</sup> The Corps of Engineers could not properly ask EPA to withhold the release of any planning or design data as the Corps is required as a matter of law to make this information publicly available "as quickly as practicable" after it is generated. 33 U.S.C. § 2342 (the "Secretary shall make publicly available, including on the Internet, all data in the custody of the Corps of Engineers on . . . the planning, design, construction, operation, and maintenance of water resources development projects . . . as quickly as practicable after the data is generated by the Corps of Engineers.")



- Including the information in letters and written testimony before Congress, and otherwise sharing the relevant information with members of Congress and their staff;
- Including the information in alerts and updates to our six million members and supporters nationwide;
- Utilizing the information in press releases, press advisories, and editorial board packets and distributing those materials to national, regional, and local media outlets;
- Sharing the documents and relevant information contained therein with various organizations and coalitions to share with their memberships and the public at large.

If for any reason this request for information cannot be sent free of charge, I request that I be notified immediately of the reasons for the denial and the cost that will be involved prior to any copying.

Under the Freedom of Information Act, the National Wildlife Federation is entitled to all of the requested information. Should you decide all or any portion of the requested materials are not to be disclosed, please describe the material withheld and specify in detail the statutory or administrative basis for withholding that material. All segregable, non-exempt parts of the information should be provided. We reserve the right to appeal any decision to withhold information. In the event that we choose to appeal such a decision, I ask that your office provide us with a copy of the appeal procedures.

The National Wildlife Federation requests a response within twenty (20) working days, in accordance with the Freedom of Information Act.

Please send the responses to Melissa Samet at the email or mailing address provided below. If you have any questions or require clarification of this request, please contact me at 415-762-8264 or [sametm@nwf.org](mailto:sametm@nwf.org). Thank you for your prompt attention to this matter.

Sincerely,



Melissa Samet  
Senior Water Resources Counsel

National Wildlife Federation  
83 Valley Road  
San Anselmo, CA 94960  
415-762-8264  
[sametm@nwf.org](mailto:sametm@nwf.org)



Message

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**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 2/10/2020 7:24:43 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** call if you have any edits.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 3/16/2020 8:34:05 PM  
**To:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessica@epa.gov]  
**Subject:** RE: Dave's edits - Sept T&I QFRs  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_03-16-20-response\_to\_dr\_edits\_redline.docx

Janita,

Attached is the redline seeking to address Dave's edits and comments reviewed by Owen, Anna, and Jess. Please let me know if Dave clears or has additional edits.

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**From:** Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Sent:** Wednesday, March 11, 2020 9:28 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>  
**Subject:** Dave's edits - Sept T&I QFRs

Hi Greg,

See Dave's edits to the September T&I Hearing QFRs. Please make the edits in redline. Owen and Anna will need to review/clear the edits before Dave sees this again (in redline).

Thank you,  
Janita

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**Janita Aguirre – Special Assistant to David Ross and Anna Wildeman**  
U.S. Environmental Protection Agency | Office of Water | Office of the Assistant Administrator  
Phone: (202) 566-1149 | Email: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)

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Message

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**From:** Palmer, Leif [Palmer.Leif@epa.gov]  
**Sent:** 1/27/2020 4:39:09 PM  
**To:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**CC:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Zapata, Cesar [Zapata.Cesar@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL [R4-RA-Conf-Rm@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Re: General Discussion - Yazoo

Yes - Mary is opening the line now.

Sent from my iPhone

On Jan 27, 2020, at 11:38 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Ogc is on the line waitingfor the call to begin. Assuming the number is as indicated on the invite.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Thursday, January 23, 2020 4:07 PM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Cc:** Penman, Crystal; Nalven, Heidi; Wehling, Carrie; Neugeboren, Steven; McGill, Thomas; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL; Goodin, John; Hough, Palmer; Frazer, Brian; Kaiser, Russell  
**Subject:** General Discussion - Yazoo  
**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Thursday, January 23, 2020 2:49 PM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Cc:** Penman, Crystal; Nalven, Heidi; Wehling, Carrie  
**Subject:** General Discussion - Yazoo



**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>

**Sent:** Thursday, January 23, 2020 12:38 PM

**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita

**Cc:** Penman, Crystal

**Subject:** General Discussion - Yazoo

**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)



Message

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**From:** Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]  
**Sent:** 3/26/2020 2:48:15 PM  
**To:** AO-OCIR Everyone [AOOCIR\_Everyone@epa.gov]; RCL's [CNRCLsOIntergov.\_Contacts@epa.gov]; Anderson, William [Anderson.William@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Corr, Elizabeth [Corr.Elizabeth@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gill, Sonam [Gill.Sonam@epa.gov]; Grable, Melissa [Grable.Melissa@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Mayer, Lauren [mayer.lauren@epa.gov]; Milbourn, Cathy [Milbourn.Cathy@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Risley, David [Risley.David@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Vazquez, Sharon [Vazquez.Sharon@epa.gov]; Wadlington, Christina [Wadlington.Christina@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]  
**Subject:** OCIR Water, Pesticides and Toxics Team Weekly Report  
**Attachments:** 3.30.2020.docx

Check out the list of viral disinfectant requests – we've heard from members in almost every region. Please let us know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753 (o)  

Ex. 6 Personal Privacy (PP) (C)



**Office of Congressional and Intergovernmental Relations**  
**Water, Pesticides, and Toxics Team**  
**Week of March 30, 2020**

**NEW:**

CRS inquiry re: SDWA 1459A and COVID-related funding w/OW (Matt)

Sen. Sinema (AZ) inquiry re: AWIA risk & resilience assessments on military bases w/OW (Matt)

**MEETINGS/BRIEFINGS/ANNOUNCEMENTS/INQUIRIES:**

**Mar 19** – Rep. Latta (OH) inquiry constituent inquiry re: SDWA Tier II notifications w/OW, R5 (Matt/Ronna Beckmann)

**Mar 19** – Sen. Coons (DE) inquiry on coronavirus and Halosil viral disinfectant w/OCSPP (Sven)

**Mar 19** – Rep. Burchett (TN) inquiry on coronavirus and Midlab viral disinfectants w/OCSPP (Sven)

**Mar 19** – Sen. Tillis (NC) on coronavirus and Global Bio Protect viral disinfectants w/OCSPP (Sven)

**Mar 19** – Rep. Marshall (KS) inquiry on coronavirus and Danolyte viral disinfectants w/OCSPP (Sven)

**Mar 19** – Notification that EPA seeking SACC nominations w/OCSPP (Sven)

**Mar 20** – Senate Ag (min) TA on draft coronavirus bill w/OCSPP, OGC (Sven)

**Mar 20** – House Ag and House E&C requests on viral disinfectant lab capacity w/OCSPP (Sven)

**Mar 20** – House T&I (maj) request re: EPA OW actions & authorities re: COVID (Matt)

**Mar 20** – Rep. DelBene (WA)/Sens. Alexander (TN)/Stabenow (MI) requests on Sterifre w/OCSPP (Sven)

**Mar 20** – HEC Inquiry on Pesticide application process w/OCSPP (Sven/JohnMark)

**Mar 20** – SEPW (maj) inquiry on Viral Disinfection Contacts w/OCSPP (Sven)

**Mar 20** – SEPW (min) inquiry on persistence data w/OCSPP (Sven)

**Mar 20** – Notification on Additional Approved Viral Disinfectants against COVID-19 w/OCSPP (Sven)

**Mar 23** – Sen. Roberts (KS)/Rep. Kilmer (WA) requests on Sterifre viral disinfectant w/OCSPP (Sven)

**Mar 23** – Rep. Yoho (FL) inquiry on coronavirus and ReliOx viral disinfectant w/OCSPP (Sven)

**Mar 23** – Rep. Pappas (NH) inquiry on coronavirus and Ecotouch viral disinfectant w/OCSPP (Sven)

**Mar 23** – Rep. Scalise (LA) request on coronavirus and Smartmatic viral disinfectant w/OCSPP (Sven)

**Mar 24** – Notification on National Agriculture Day (Sven)

**Mar 24** – Sen. Loeffler (GA) inquiry on coronavirus and Safe Decon viral disinfectant w/OCSPP (Sven)

**Mar 24** – Rep. Maloney (NY) inquiry on Ecological Solutions viral disinfectant w/OCSPP (Sven)

**Mar 24** – Senate Finance inquiry on disinfectant tax incentives w/OCSPP (Tony/Sven)

**Mar 25** – House Approps inquiry on coronavirus and Gruene Anolyte viral disinfectant w/OCSPP (Sven)

**Mar 25** – Rep. Tom Graves (GA) inquiry on Vital Oxide viral disinfectant w/OCSPP (Sven)

**Mar 25** – Notification on TSCA fees proposal to provide exemptions w/OCSPP (Sven)

**Mar 26** – Rep. Burchett (TN) followup notification on Midlab viral disinfectants w/OCSPP (Sven)

**Mar 26** – Rep. Rutherford (FL) inquiry on Microgen's D-125 disinfectant w/OCSPP (JohnMark/Sven)

**Week of Mar 25** – Notification on proposed Wyoming UIC Class VI primacy approval w/ OW, R8 (Matt)

**Week of Apr 6 (tent)** – SEPW (min) briefing request on Yazoo pumps w/R4, OW (Denis)

**May 6** – House Science briefing request on HABs w/ORD, OW (Demond, Denis)

**Pending** – HTI (min) TA request on 10 year NPDES permit period w/OW (Denis)

**Pending** – Sen. Feinstein (CA) TA request on border wastewater w/R9, OITA, OW (Denis)

**Pending** – Sen. Johnson (WI)/Rep. Gallegher (WI)/State Sen. Kooyenga (WI) inquiry on Barbicide viral disinfectant w/OCSPP (Sven/Jack)

**Pending** – Sen. Lee (UT) constituent question on EarthTec label amendment w/OCSPP (Sven)

**Pending** – Rep. Yoho (FL) inquiry on glyphosate labeling w/OCSPP (Sven)

[ PAGE \\* MERGEFORMAT ]



**Pending** – Sens. Wicker and Hyde-Smith (MS) – Bug light pesticide imports w/OCSPP, R4 (Sven)  
**Pending** – Sen. Whitehouse (RI) question on lead abatement costs w/OCSPP (Sven)  
**Pending** – Rep. Barr (KY) constituent question about Mosquito Mate registration w/OCSPP (Sven)  
**Pending** – Senate Ag question on pesticides reregistration advisory statement w/OCSPP (Sven)  
**Pending** – Rep. McClintock (CA) inquiry re: pollution from Mule Creek State Prison w/R9 (Sven)  
**Pending** – Sen. Cardin (MD) TA request on Chesapeake Bay wastewater funding program w/ OW (Matt)  
**Pending** – Sen. Cardin (MD) TA request on low-income drinking water needs assessment w/OW (Matt)  
**Pending** – SEPW TA request on drinking water & clean water provisions of draft WRDA w/OW (Matt)  
**Pending** – Senate Indian Affairs TA request on Indian reservation drinking water grants w/OW (Matt)  
**Pending** – Rep. Cuellar (TX) inquiry on USMCA border water funding w/OW, OITA (ACC team, Matt)  
**Pending** – PFAS briefings for House Approps w/cross-HQ team (Matt)  
**Pending** – HTI QFRs from 9/18 water policy hearing w/OW (Denis)  
**Pending** – SEPW QFRs from 10/23 WRDA hearing w/OW (Sven/Matt)  
**Pending** – HAC Budget hearing QFRs (Team)  
**Pending** – Sen. Hyde-Smith (MS) inquiry re: City of Pearl, MS, special approps grant status w/R4 (Denis)  
**Pending** – House approps (maj) inquiry re: EPA OW actions & authorities re: COVID w/OW  
(Matt/OCFO)

**HEARINGS/FORUMS:** None

**116<sup>th</sup> CONGRESS ENACTED LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/483/actions?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7CS%7C2019-02-15%5C%22+AND+%28billsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=1"** ]/PL 116-8 – Roberts (KS), Pesticides Fees Reauthorization (PRIA 4), Signed on Mar 8 (Sven)

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-**



**congress/senate-bill/1689" ]/PL 116-63 – Booker (NJ), SRF transfer bill, Signed on Oct 3 (Elizabeth)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/1790" ]/PL 116-92 – Inhofe (OK), NDAA w/PFAS provisions on TSCA and TRI, Signed on Dec 20 (Matt)**

**116<sup>th</sup> CONGRESS ACTIVE LEGISLATION:**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/535" ] – Dingell (MI), requires EPA to declare PFOA/PFOS as CERCLA hazardous substances, develop a PFOA/PFOS MCL, require PFAS testing, create PFAS infrastructure grant program, list PFAS as Clean Air Act HAPs, prohibit PFAS waste incineration, label PFAS-free cooking products, and develop guidance to minimize firefighting-foam use, **Passed House Jan 10** (Matt)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/729/" ] – Kilmer (WA), Coastal and Great Lakes Communities Enhancement Act, creates fish habitat partnership program run by NOAA w/ EPA participation, **Passed House Dec 10** (Denis)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/925/" ] – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, Passed House Nov 20, **Amended and passed Senate via unanimous consent Jan 9** (Denis, Sven)**

**[ HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/1331" ] – Speier (CA), San Francisco Bay Restoration**



Act, establishes a grant program and program office for Bay restoration, authorizes \$25 million per year for FY20-24. **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1162>" ]**

– Napolitano (CA), Water Recycling Investment and Improvement Act, Amends & expands Bureau of Reclamation water recycling & reuse grant program, **House Nat'l Resources markup held Mar 11** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1603/text>" ]**

– Bonamici (OR), Bans asbestos and adds reporting requirements, same as S.717, **HEC hearing May 8, Passed HEC Nov 19** (Sven)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/1620/text>" ]**

– Luria (VA), Chesapeake Bay Program Reauthorization Act. A reauthorization at \$90 million for FY20, \$90.5 million for FY21, \$91 million for FY22, \$91.5 million for FY23, and \$92 million for FY24, **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/2247>" ]**

– Heck (WA), Promoting United Government Efforts To Save Our Sound Act ("PUGET SOS Act"). Establishes a program office, Task Force, and Advisory Committee to enhance efforts to protect Puget Sound, **Passed House Feb 5** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/3723>" ]**

– Levin (CA), Desalination Development Act, Amends Dept of Interior desalination-project authorities, **House Nat'l Resources markup held Mar 11** (Denis)



[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4031" ]** – Joyce (OH), reauthorizes the Great Lakes Restoration Initiative, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Malinowski (NJ), reauthorizes the National Estuary Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4044" ]** – Graves (LA), reauthorizes the Lake Pontchartrain Basin Restoration Program, **Passed House Feb 5 (Denis)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/4891/text" ]** – Torres Small (NM), Western Water Security Act of 2019, Amends a number of Dept of Interior water programs, including WaterSmart (water efficiency), desalination, drought, and groundwater management, **House Nat'l Resources hearing held Jan 28 (Matt)**,

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5279" ]** – Pallone (NJ), Cosmetic Safety Enhancement Act, Amends existing FDA authorization to review cosmetics, **Marked up by E&C health subcommittee 3/11 w/ Dingell amendment to prioritize cosmetics w/ PFAS (Matt)**

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/house-bill/5347/" ]** – Cox (CA), Disadvantaged Community Drinking Water Assistance Act, Creates new DOI grant program for disadvantaged communities with drinking water quality or supply challenges, **House Nat'l Resources hearing held Jan 28 (Matt)**



[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5539>" ]**

– Pappas (NH), Clean Water Standards for PFAS Act, Requires EPA to develop effluent standards, pretreatment standards, and water quality criteria for PFAS, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5540/>" ]**

– Delgado (NY), PFAS Transparency Act, Requires notification of PFAS discharges to POTWs, **Introduced Jan 3, incorporated into H.R. 535** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/5628>" ]**

– Waltz (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as S. 3211, **Introduced Jan 16** (Matt)

[ **HYPERLINK** "<https://www.congress.gov/bill/116th-congress/house-bill/5986>" ] – Grijalva (AZ), Environmental Justice for All Act, Broad environmental justice bill that would amend CWA NPDES requirements to require consideration of cumulative impacts and EJ, **Introduced Feb 27** (Denis)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6053>" ]**

– Kildee (MI), Test Your Well Water Act, Requires EPA online tool with resources on household well water testing (identical text to Sec. 14 of H.R. 535), **Introduced Mar 2** (Matt)

[ **HYPERLINK**

**"<https://www.congress.gov/bill/116th-congress/house-bill/6112/>" ]**

– Huffman (CA), Oil and Water Don't Mix Act, Adds requirements for oil & gas operations to protect drinking water, including removing SDWA exemption, requiring SDWA chemical disclosure, and requiring CWA stormwater permitting for oil & gas operations, **Introduced Mar 5** (Matt)



## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6113>" ]**

– Katko (NY), ARPA–H2O Act, Creates new “Advanced Research Projects Agency-Water” within EPA, EPA provided TA on Senate draft bill in Nov 2019, **Introduced Mar 5** (Matt/ACC team)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/house-bill/6185>" ]**

– Wasserman Schultz (FL), Save Our Springs Act, Imposes 6¢/gal tax on bottled water extraction, with proceeds going to a DWSRF Trust Fund in the U.S. Treasury, **Introduced Mar 10** (Matt)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/10>" ]**

– Rubio (FL), requires the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida, **Introduced Jan 3, Passed Senate Commerce Nov 13** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1087>" ]**

– Barrasso (WY), limits scope and timeline for state CWA Section 401 certifications, Same as HR 2205, **Introduced Apr 9, SEPW hearing Nov 19** (Denis)

## [ HYPERLINK

**"<https://www.congress.gov/bill/116th-congress/senate-bill/1982>" ]**

– Sullivan (AK), Save Our Seas 2.0 Act, **Amended and passed Senate via unanimous consent Jan 9** (Denis)

## [ HYPERLINK

**"[\[ PAGE \\\* MERGEFORMAT \]](https://www.congress.gov/bill/116th-</a></b></p></div><div data-bbox=)**



**congress/senate-bill/2353" ]** – Peters (MI), requires FEMA to develop guidance (in coordination w/EPA) on protecting first responders from PFAS exposure & to minimize releases, **OMB sent other agencies' views for our review Mar 23** (Matt)

[ **HYPERLINK**

**"https://www.govinfo.gov/content/pkg/BILLS-116s2525is/pdf/BILLS-116s2525is.pdf" ]** – Shaheen (NH), Guaranteeing Equipment Safety for Firefighters Act, requires NIST to conduct a study of personal protective equipment worn by firefighters to determine the prevalence and concentration of PFAS, **introduced Sept 19, Passed Senate Commerce Nov 13** (Matt)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/2799/" ]** – Murkowski (AK), Nexus of Energy and Water for Sustainability (NEWS) Act of 2019, Establishes energy-water nexus sustainability office managed by the Depts of Energy & Interior, **Introduced Dec 17** (Denis)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/3051" ]** – Barrasso (WY), America's Conservation Enhancement Act, Broad conservation bill that reauthorizes the Chesapeake Bay program, exempts fishing tackle from TSCA, and creates FWS-led fish habitat program w/ role for OW AA, **Passed Senate EPW Dec 17, Incorporated into H.R. 925, which passed Senate via unanimous consent Jan 9** (Denis, Sven)

[ **HYPERLINK**

**"https://www.congress.gov/bill/116th-congress/senate-bill/3211" ]** – Rubio (FL), Clean Water Allotment Modernization Act, Changes statutory CWSRF allotments and sets up new process for updates, Same as H.R. 5628, **Introduced Jan 16** (Matt)

[ **HYPERLINK "https://www.congress.gov/bill/116th-congress/senate-bill/3480" ]** – Shaheen (NH), PFAS Testing and Treatment Act of 2020, Authorizes \$1b/yr in appropriations for SDWA DWSRF emerging-contaminant projects and \$1b/yr under CWA for PFOA/PFOS groundwater cleanups, **Introduced Mar 12; CBO inquiry Mar 19 re groundwater cleanup guidance** (Matt / Carolyn Levine)



Message

---

**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 2/10/2020 6:48:37 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]  
**Subject:** FW: draft Yazoo issue paper - 12-13-2019.docx  
**Attachments:** draft Yazoo issue paper - 12-13-2019.docx

Hi Lee – Attached is the most recent issue paper.

Our current status statement is:

On January 15, 2020 EPA had a productive meeting with the Corps. In the meeting, the Corps gave a presentation on information provided to EPA in late December. EPA is currently considering the information provided to determine next steps.

- Mary



Message

---

**From:** McDonough, Owen [mcdonough.owen@epa.gov]  
**Sent:** 3/16/2020 3:32:31 PM  
**To:** Kramer, Jessica L. [kramer.jessical@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Wildeman, Anna [wildeman.anna@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om-aw-gsjlk-om.docx

Very minor punctuation edits that I layered atop Jess's edits.

Owen

---

**From:** Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Sent:** Monday, March 16, 2020 11:16 AM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Wildeman, Anna <wildeman.anna@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

I had just a few edits. They're attached – let me know if you have questions on them Thanks,

Jess

Jessica L. Kramer  
Senior Counsel for the Assistant Administrator  
U.S. Environmental Protection Agency – Office of Water  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C.  
[Kramer.jessical@epa.gov](mailto:Kramer.jessical@epa.gov)  
(202) 564-6322

---

**From:** McDonough, Owen <mcdonough.owen@epa.gov>  
**Sent:** Monday, March 16, 2020 10:17 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Wildeman, Anna <wildeman.anna@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Subject:** Re: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

I can review by early afternoon today.

Sent from my iPhone

On Mar 16, 2020, at 10:10 AM, Spraul, Greg <Spraul.Greg@epa.gov> wrote:

Thanks Anna. I added a few things to address your comments, but we need Owen to look at your edits to the WOTUS ones and we need Jess/Charlotte to look at your edits to the one PFAS question.

Do folks have time to review this version today? This version seeks to address Dave's comments and to ensure answers are up to date.



---

**From:** Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>  
**Sent:** Saturday, March 14, 2020 10:27 AM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Cc:** McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Aguirre, Janita <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

Greg, here are my edits and bubbles. Copying Owen and Charlotte because there are one or two on WOTUS and PFAS. Copying Lee and Janita for awareness.

<responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om-aw-gs.docx>



Message

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**From:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Sent:** 1/27/2020 4:38:17 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Zapata, Cesar [Zapata.Cesar@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]  
**CC:** Penman, Crystal [Penman.Crystal@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL [R4-RA-Conf-Rm@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** RE: General Discussion - Yazoo

Ogc is on the line waitingfor the call to begin. Assuming the number is as indicated on the invite.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Thursday, January 23, 2020 4:07 PM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Cc:** Penman, Crystal; Nalven, Heidi; Wehling, Carrie; Neugeboren, Steven; McGill, Thomas; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL; Goodin, John; Hough, Palmer; Frazer, Brian; Kaiser, Russell  
**Subject:** General Discussion - Yazoo  
**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID - Ex. 6 Personal Privacy (PP)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Thursday, January 23, 2020 2:49 PM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Cc:** Penman, Crystal; Nalven, Heidi; Wehling, Carrie  
**Subject:** General Discussion - Yazoo  
**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID - Ex. 6 Personal Privacy (PP)

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Thursday, January 23, 2020 12:38 PM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif;



Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita

**Cc:** Penman, Crystal

**Subject:** General Discussion - Yazoo

**When:** Monday, January 27, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 2/10/2020 5:54:01 PM  
**To:** McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Tovar, Katlyn [tovar.katlyn@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** DEADLINE COB 2/12 - review responses to QFRs from 9/18 Ross hearing  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-23-20\_redline.docx; responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-31-20.docx

OW Senior Leadership,

As I mentioned at staff meeting today, I think the responses to the QFRs from Dave's September T&I hearing are ready for Dave, but I want to give you all another few days to take one last look to be sure your comments / edits were incorporated/addressed. Attached is a clean and redline version. If you have additional edits, please make them to the clean version dated 1-31-20. I would like to get these to Dave on Thursday 2/13.

Thanks,  
Greg

---

**From:** Spraul, Greg  
**Sent:** Thursday, January 23, 2020 1:57 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>  
**Cc:** Tovar, Katlyn <tovar.katlyn@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** DEADLINE: 1/28 - review responses to QFRs from 9/18 Ross hearing

Owen, Jess, and Anna,

Congratulations on the final WOTUS step 2 rule!

Attached is the latest version of Dave's T&I QFRs for your review. I attempted to edit the WOTUS responses based on the now final rule.

Please review and provide any edits by COB Tuesday, Jan. 28.

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 08, 2020 5:21 PM



**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>  
**Cc:** Tovar, Katlyn <[tovar.katlyn@epa.gov](mailto:tovar.katlyn@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>  
**Subject:** RE: review responses to QFRs from 9/18 Ross hearing

Greg,

The current responses to DeFazio – Blending and DeFazio – Pebble are fine. My comments on Yazoo are attached.

Lee

---

**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Wednesday, January 8, 2020 3:45 PM  
**To:** McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Tovar, Katlyn <[tovar.katlyn@epa.gov](mailto:tovar.katlyn@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>  
**Subject:** review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,

Consistent with Dave's direction from Monday, I am passing along to you for review an updated set of responses to Dave's Sept T&I hearing QFRs. These have been updated by the offices. I left some redline in to show where OWOW updated items re: 401 and where OGWDW updated the PFAS response based on Jess's comments. Some of the WOTUS ones will need to be updated a bit after the final rule is public. Please let me know if you would like me to give you a hard copy. The final oversight letters are attached as a reference/resource.

Below are the question assignments:

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

---

**From:** Spraul, Greg  
**Sent:** Tuesday, October 29, 2019 2:17 PM  
**To:** McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>  
**Subject:** DEADLINE COB Monday 11/4 - review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,

Attached are draft responses to the questions for the record that came in from Dave's September 9/18 hearing before House T&I for your review. The redline in the document are my edits to the program office authored answers. Based on my reading, these answers are consistent with the messaging I've seen in hearing fact sheets, other QFR responses, our oversight letter responses and press releases. Please review and provide edits by COB Monday, November 4. For your reference, I am also attaching the final responses to the 4 DeFazio oversight letters (sans attachments).



Below are the question assignments:

DeFazio WOTUS – Owen (pages 1-5)  
DeFazio DHC – Anna (pages 5-6)  
DeFazio Blending – Lee (pages 6-7)  
DeFazio PFAS – Jess (Page 7)  
DeFazio 401 – Anna/Jess (Pages 7-8)  
DeFazio Yazoo – Lee (Pages 8-9)  
DeFazio Pebble – Lee (Pages 9-10)  
Johnson 1 and 2 – Owen (page 12)  
Johnson 3 401 – Anna/Jess (Page 13)  
Graves 1 – WA WQS – Anna (Page 13)

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

---

**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 1/10/2020 4:18:32 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** FW: Updated citizen response re. Yazoo

Lee - this seems fine. Let me know if you concur.

---

**From:** Marraccini, Davina <Marraccini.Davina@epa.gov>  
**Sent:** Friday, January 10, 2020 11:09 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Wise, Allison <Wise.Allison@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Hudson, Wanda <Hudson.Wanda@epa.gov>  
**Subject:** RE: Updated citizen response re. Yazoo

All,

R4 made a few minor tweaks to the middle paragraph. See highlighted edits below and let me know ASAP of any show stoppers as we plan to route this for signature today. Thank you!

## Ex. 5 Deliberative Process (DP)

*Davina Marraccini*

Government Liaison

U.S. Environmental Protection Agency - Region 4

404-562-8293 (office)

Ex. 6 Personal Privacy (PP) (cell)

[marraccini.davina@epa.gov](mailto:marraccini.davina@epa.gov)

---

**From:** Marraccini, Davina  
**Sent:** Thursday, January 9, 2020 2:45 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Wise, Allison <Wise.Allison@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Hudson, Wanda <Hudson.Wanda@epa.gov>  
**Subject:** RE: Updated citizen response re. Yazoo

Thank you, Greg.



---

**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Thursday, January 9, 2020 12:46 PM  
**To:** Marraccini, Davina <[Marraccini.Davina@epa.gov](mailto:Marraccini.Davina@epa.gov)>; Borum, Denis <[Borum.Denis@epa.gov](mailto:Borum.Denis@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Hudson, Wanda <[Hudson.Wanda@epa.gov](mailto:Hudson.Wanda@epa.gov)>  
**Subject:** RE: Updated citizen response re. Yazoo

I showed this draft to Lee and he is fine with it.

---

**From:** Marraccini, Davina <[Marraccini.Davina@epa.gov](mailto:Marraccini.Davina@epa.gov)>  
**Sent:** Wednesday, January 08, 2020 3:53 PM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; Borum, Denis <[Borum.Denis@epa.gov](mailto:Borum.Denis@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Hudson, Wanda <[Hudson.Wanda@epa.gov](mailto:Hudson.Wanda@epa.gov)>  
**Subject:** FW: Updated citizen response re. Yazoo

Good afternoon,

We continue to receive citizen correspondence re. Yazoo, with 2 responses due on 1/10. I've attached one of the incoming letters together with an updated draft response (new language in yellow). Please let me know as soon as possible whether you'd like any changes made.

Thank you, and I hope everyone is having a good start to the year.

*Davina Marraccini*

Government Liaison

U.S. Environmental Protection Agency - Region 4

404-562-8293 (office)

Ex. 6 Personal Privacy (PP) {cell}

[marraccini.davina@epa.gov](mailto:marraccini.davina@epa.gov)



Message

---

**From:** Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Sent:** 3/16/2020 3:16:27 PM  
**To:** McDonough, Owen [mcdonough.owen@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Wildeman, Anna [wildeman.anna@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om-aw-gsjlk.docx

I had just a few edits. They're attached – let me know if you have questions on them Thanks,

Jess

Jessica L. Kramer  
Senior Counsel for the Assistant Administrator  
U.S. Environmental Protection Agency – Office of Water  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C.  
Kramer.jessical@epa.gov  
(202) 564-6322

---

**From:** McDonough, Owen <mcdonough.owen@epa.gov>  
**Sent:** Monday, March 16, 2020 10:17 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** Wildeman, Anna <wildeman.anna@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>  
**Subject:** Re: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

I can review by early afternoon today.

Sent from my iPhone

On Mar 16, 2020, at 10:10 AM, Spraul, Greg <Spraul.Greg@epa.gov> wrote:

Thanks Anna. I added a few things to address your comments, but we need Owen to look at your edits to the WOTUS ones and we need Jess/Charlotte to look at your edits to the one PFAS question.

Do folks have time to review this version today? This version seeks to address Dave's comments and to ensure answers are up to date.

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Saturday, March 14, 2020 10:27 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** McDonough, Owen <mcdonough.owen@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

Greg, here are my edits and bubbles. Copying Owen and Charlotte because there are one or two on WOTUS and PFAS. Copying Lee and Janita for awareness.



<responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om-aw-gs.docx>



Message

---

**From:** Andy Gipson [Andy@mdac.ms.gov]  
**Sent:** 2/26/2020 6:32:03 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Chris McDonald [Chris@mdac.ms.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Re: Yazoo Pumps

Thank you! We will eagerly await the word.

AG

> On Feb 26, 2020, at 1:13 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:  
>  
> Commissioner,  
>  
> We at the Office of Water appreciate your feedback on the new Navigable Waters Protection Rule (aka new WOTUS rules) in general and Dr. Owen McDonough's comments on them in particular.  
>  
> EPA is working aggressively with the Army Corps of Engineers to find a timely solution to the flooding issues in the Yazoo Backwater region. We would hope to have a more thorough articulation of possible paths forward in the near future.  
>  
> Thank you for weighing in on this important issue and we look forward to working with you going forward.  
>  
> Regards,  
> Lee  
>  
> D. Lee Forsgren  
> Deputy Assistant Administrator  
> Office of Water  
> Environmental Protection Agency  
> 1200 Pennsylvania, Avenue NW  
> Room 3219B WJC East Building  
> Washington, DC 20460  
> 202-564-5700  
>  
>  
>  
> -----Original Message-----  
> From: Andy Gipson <Andy@mdac.ms.gov>  
> Sent: Wednesday, February 26, 2020 11:38 AM  
> To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
> Cc: Chris McDonald <Chris@mdac.ms.gov>  
> Subject: Yazoo Pumps  
>  
> Mr. Forsgren,  
>  
> Good morning, I'm Mississippi's Commissioner of Agriculture and Commerce Andy Gipson. I ran into your colleague Owen McDonough today (who incidentally did a remarkable job explaining the new and greatly improved WOTUS rules) at an agriculture conference I'm attending in D.C.  
>  
> I'm writing to you at a time and concerning a matter of great urgency - the pending Yazoo Backwater Pumps that would alleviate not all, but some of the historic flooding our farmers and homeowners experienced last year, and tragically are experiencing again right now. With over 440,000 acres underwater today, we are looking at a potential repeat of the historic 7 month flood of 2019.  
>  
> I'm sincerely asking you and the EPA to please do everything in your power to help our people, our farmers, our neighbors and even our wildlife which are again being devastated by these floods. If my office can assist in any way, we will do so. Any word from you or the EPA on approving the new pump project will provide a glimmer of hope to our people, which frankly is desperately needed at a time such as this.  
>  
> Thank you so much for your excellent work on WOTUS, and thanks for anything you or your office can do to move the needle on the pumps. Let me know what I can do to help. Thanks!  
>  
> Sincerely,



>  
> Andy Gipson  
> 601-519-1880

>  
>  
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**House Committee on Energy and Commerce, Environment and Climate Change**  
**Subcommittee**

**Majority**

- Full Committee Chairman Frank Pallone (NJ-06)
  - PFAS (H.R. 535, etc.), Beach Grants elimination
- Chairman Paul Tonko (NY-20)
  - PFAS
- Rep. Yvette Clarke (NY-09)
- Rep. Scott Peters (CA-52)
  - U.S.-Mexico Border
- Rep. Nanette Diaz Barragán (CA-44)
  - PFAS (drinking water amendment to H.R. 535)
- Rep. Don McEachin (VA-04)
- Rep. Lisa Blunt Rochester (DE-At Large)
  - WIIN Grants, Small Systems
- Rep. Darren Soto (FL-09)
  - PFAS (using Safer Choice for alternate cooking materials)
- Rep. Diana DeGette (CO-01)
  - Environmental Justice, Hydraulic fracturing, 401
- Rep. Jan Schakowsky (IL-09)
  - Great Lakes, PFAS, SRF cuts
- Rep. Doris Matsui (CA-06)
- Rep. Jerry McNerney (CA-09)
- Vice Chairman Raul Ruiz (CA-36)
  - PFAS (health impacts)
- Rep. Debbie Dingell (MI-12)
  - PFAS (in Ann Arbor, MI; lead sponsor of H.R. 535)

**Minority**

- Full Committee Ranking Member Greg Walden (OR-02)
- Ranking Member John Shimkus (IL-15)
  - PFAS
- Rep. Cathy McMorris-Rodgers (WA-05)
  - Washington water quality standards
- Rep. David McKinley (WV-01)
  - PFAS (WV)
- Rep. Bill Johnson (OH-06)
- Rep. Billy Long (MO-07)
- Rep. Bill Flores (TX-17)
- Rep. Markwayne Mullin (OK-02)
- Rep. Buddy Carter (GA-01)
  - PFAS (opposed CERCLA hazardous-substance designation)
- Rep. Jeff Duncan (SC-03)



## **House Interior-Environment Appropriations Subcommittee**

### **Majority**

- Chair Betty McCollum (MN-04)
  - Poly Met
- Rep. Chellie Pingree (ME-01)
  - PFAS (Safer Choice amendment to H.R. 535)
- Rep. Derek Kilmer (WA-6)
  - Puget Sound, Washington water quality standards
- Rep. José Serrano (NY-15)
- Rep. Mike Quigley (IL-05)
- Rep. Bonnie Watson Coleman (NJ-12)
- Rep. Brenda Lawrence (MI-14)
  - Flint water, PFAS in Michigan

### **Minority**

- Rep. Dave Joyce (OH-14)
  - GLRI
  - Nutrients/HABs
  - Asian carp
- Rep. Mike Simpson (ID-02)
- Rep. Chris Stewart (UT-02)
  - Gold King Mine
- Rep. Mark Amodei (NV-02)
  - American Iron and Steel requirements for SRFs

## **Senate Committee on Environment and Public Works**

### **Majority**

- Chairman John Barrasso (R-WY)
  - WOTUS, 401 certification, National Rivers & Streams Assessment (recent letter)
- Senator Jim Inhofe (R-OK)
- Senator Shelley Moore Capito (R-WV)
  - PFAS (esp. TRI reporting), mining
- Senator Kevin Cramer (R-ND)
  - M-44
- Senator Mike Braun (R-IN)
  - WOTUS
- Senator Mike Rounds (R-SD)
- Senator Dan Sullivan (R-AK)
  - Save Our Seas 2.0 Act (co-sponsor), Pebble Mine, Canadian trans-boundary mining
- Senator John Boozman (R-AR)
  - WIFIA / SRF-WIN Act
- Senator Roger Wicker (R-MS)
  - Spartan mosquito eradicator, Yazoo Pumps



- Senator Richard Shelby (R-AL)
- Senator Joni Ernst (R-IA)
  - WOTUS

#### **Minority**

- Ranking Member Tom Carper (D-DE)
  - PFAS, WOTUS
- Senator Ben Cardin (D-MD)
  - Chesapeake Bay, WIIN lead grants
- Senator Bernie Sanders (I-VT)
- Senator Sheldon Whitehouse (D-RI)
  - Save Our Seas 2.0 Act (co-sponsor)
- Senator Jeff Merkley (D-OR)
- Senator Kirsten Gillibrand (D-NY)
  - PFAS, Lake Champlain, Water infrastructure funding
- Senator Cory Booker (D-NJ)
  - Animal testing, mercury flooring, Newark/lead
- Senator Ed Markey (D-MA)
  - Drinking water, PFAS
- Senator Tammy Duckworth (D-IL)
  - Lead in drinking water
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay TMDL

### **Senate Interior-Environment Appropriations Subcommittee**

#### **Majority**

- Chairman Lisa Murkowski (R-AK)
  - Chitosan, Alaska Native Villages, fish grinding, Pebble Mine, Canadian trans-boundary mining
- Senator Lamar Alexander (R-TN)
- Senator Roy Blunt (R-MO)
  - Missouri nutrient plan
- Senator Shelley Moore Capito (R-WV)
  - PFAS (esp. TRI reporting), mining
- Senator Cindy Hyde-Smith (R-MS)
  - Yazoo Pumps
- Senator Steve Daines (R-MT)
- Senator Marco Rubio (R-FL)
  - CWSRF allotments, rural water notifications, HABs

#### **Minority**

- Ranking Member Tom Udall (D-NV)
- Senator Dianne Feinstein (D-CA)
  - San Francisco Bay, Cargill salt ponds
- Senator Patrick Leahy (D-VT)
  - Lake Champlain



- Senator Jack Reed (D-RI)
- Senator Jon Tester (D-MT)
  - Canadian trans-boundary mining
- Senator Jeff Merkley (D-OR)
- Senator Chris Van Hollen (D-MD)
  - Chesapeake Bay TMDL



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## **Member Bios**

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Rep. Jose Serrano .....	HACDEM-5
Rep. Mike Quigley .....	HACDEM-6



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Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 3/16/2020 2:10:23 PM  
**To:** Wildeman, Anna [wildeman.anna@epa.gov]  
**CC:** McDonough, Owen [mcdonough.owen@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]  
**Subject:** RE: responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om-aw-gs.docx

Thanks Anna. I added a few things to address your comments, but we need Owen to look at your edits to the WOTUS ones and we need Jess/Charlotte to look at your edits to the one PFAS question.

Do folks have time to review this version today? This version seeks to address Dave's comments and to ensure answers are up to date.

---

**From:** Wildeman, Anna <wildeman.anna@epa.gov>  
**Sent:** Saturday, March 14, 2020 10:27 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Cc:** McDonough, Owen <mcdonough.owen@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

Greg, here are my edits and bubbles. Copying Owen and Charlotte because there are one or two on WOTUS and PFAS. Copying Lee and Janita for awareness.



Message

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**From:** Wildeman, Anna [wildeman.anna@epa.gov]  
**Sent:** 3/14/2020 2:27:04 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** McDonough, Owen [mcdonough.owen@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_02-25-20-dr-om\_AW.docx

Greg, here are my edits and bubbles. Copying Owen and Charlotte because there are one or two on WOTUS and PFAS. Copying Lee and Janita for awareness.



Message

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**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 1/27/2020 1:23:26 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: Yazoo Pumps: Alternatives Strategy

Thanks, Lee.

We will enter this in the system to reassign to R4.

bf

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, January 24, 2020 3:40 PM  
**To:** Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: Yazoo Pumps: Alternatives Strategy

Team,

We need to prepare a response to this through the normal system.

Lee

---

**From:** Melissa Samet <sametm@nwf.org>  
**Sent:** Friday, January 24, 2020 3:32 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

As another follow-up on my email below, I wanted to let you know that the National Wildlife Federation submitted the attached Yazoo Pumps-focused FOIA to EPA today (we also sent a similar request to the Corps). This FOIA was prompted by recent social media posts by the Corps' Mississippi Valley Division and the Delta Council that highlight ongoing and apparently extensive work being carried out by the Corps to move this project forward.

We of course continue to strongly support EPA's well-founded and extensively-documented veto of this project, and hope that our FOIA will not create an undue burden on EPA staff.

Best Regards,  
--Melissa

Melissa Samet  
Senior Water Resources Counsel  
National Wildlife Federation  
(o) 415-762-8264



(c) Ex. 6 Personal Privacy (PP)  
sametm@nwf.org

---

**From:** Melissa Samet  
**Sent:** Thursday, January 23, 2020 12:14 PM  
**To:** Forsgren.lee@Epa.gov  
**Cc:** Mejias.melissa@Epa.gov; Frazer.brian@epa.gov; Goodin.john@epa.gov; Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Subject:** Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

I wanted to follow up on my email below to see whether you have had the opportunity to discuss the attached alternatives strategy with the Water Subcabinet and the Corps. As noted, the alternatives outlined in this strategy rely on federal programs that are currently applicable to the Yazoo Backwater Area (YBWA), currently funded, and currently accepting proposals for the use of natural infrastructure and nonstructural measures that would safeguard YBWA communities

A Mississippi Valley Division Facebook post from last week highlights a January 15 Corps and EPA senior leadership meeting in Atlanta that focused on the Yazoo Pumps. Given EPA's extensively documented 404(c) veto (which, as you know, was upheld by the U.S. Court of Appeals for the Fifth Circuit), we are hopeful that the meeting focused on the types of alternative strategies outlined in our proposal, which would certainly qualify as a Least Environmentally Damaging Alternative under the CWA 404(b)(1) Guidelines.

I would appreciate the opportunity to answer any questions you might have about the alternatives strategy and the conservation community's continued opposition to the Yazoo Pumps.

Thank you.

Melissa Samet  
Senior Water Resources Counsel  
National Wildlife Federation  
(o) 415-762-8264  
(c) Ex. 6 Personal Privacy (PP)  
sametm@nwf.org

---

**From:** Melissa Samet  
**Sent:** Monday, December 16, 2019 2:14 PM  
**To:** Forsgren.lee@Epa.gov; Mejias.melissa@Epa.gov  
**Cc:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Subject:** Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

As promised when we met last month, I've attached a strategy for providing prompt, cost-effective, and sustainable flood damage reduction to the Yazoo Backwater Area (YBWA) of Mississippi. This strategy relies on federal programs that are currently funded and accepting proposals to quickly deploy natural infrastructure and nonstructural measures to safeguard YBWA communities. The ability to promptly implement these measures makes the unacceptably destructive and costly Yazoo Pumps even more archaic today than when they were vetoed by EPA in 2008.

The National Wildlife Federation and Audubon hope this document proves useful as EPA and the Water Subcabinet assess opportunities for providing long-term, sustainable protections to YBWA communities. I would appreciate the opportunity to discuss this strategy with you any answer any questions you might have.



Thank you.

Melissa Samet  
Senior Water Resources Counsel  
National Wildlife Federation  
(o) 415-762-8264  
(c) Ex. 6 Personal Privacy (PP)  
[sametm@nwf.org](mailto:sametm@nwf.org)



Message

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**From:** Walker, Mary [walker.mary@epa.gov]  
**Sent:** 1/31/2020 7:20:04 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Palmer, Leif [Palmer.Leif@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** RE: Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

Yes – I will ask Belinda to set up a call for us.

In the meantime, I'm going to try to catch you this afternoon, Lee. MG Toy reached out early this morning and we've set a call for this evening to touch base.

Mary

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, January 31, 2020 1:20 PM  
**To:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** RE: Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

Mary and David,

Perhaps we should set up a quick call on Monday. I have a few questions on this.

Lee

---

**From:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>  
**Sent:** Friday, January 31, 2020 12:27 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

Attorney Client Privileged/Deliberative – Do Not Release

Mary, Lee and David,

Good afternoon. Following up on our call last week, the Yazoo team has developed the attached document examining the 2019 Yazoo Pump submission from the USACE Vicksburg.

Please let us know if you need additional information.

Thanks  
Jeaneanne



Message

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**From:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Sent:** 2/26/2020 4:50:06 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: UPDATED Administrator's Binder  
**Attachments:** 2020.02.26 - FULL - UPDATED FACT SHEETS - Budget Hearing Table of Contents.docx

Still working out details on the next round of briefings.

**Tony Frye**

Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Wednesday, February 26, 2020 11:30 AM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: UPDATED Administrator's Binder

Did you send the updated full TOC?

Also is the prep meeting on 3/3 for 30 min focused on House approps hearing prep? Mock hearing? Format?

---

**From:** Spraul, Greg  
**Sent:** Wednesday, February 26, 2020 9:23 AM  
**To:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** FW: UPDATED Administrator's Binder

Tony – I think you attached the wrong Table of contents file. Can you send me the correct files with the full TOC?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, February 26, 2020 9:20 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Subject:** FW: UPDATED Administrator's Binder

Greg,

This is what Tony sent last night.

Lee

Hello Team – Attached, please find a digital copy of the full binder with updated factsheets. Also attached is the table of contents – the cyan highlighted pages reflect updated sheets from the briefing sessions. If you believe something has been missed or not the most up to date, please let me know and we will address as appropriate. Thank you for your assistance and support to date. Let me know if you have any questions.



Best,  
Tony

**Tony Frye**

Director of Senate Affairs

Office of Congressional Affairs

Environmental Protection Agency

Cell: Ex. 6 Personal Privacy (PP)



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Senator Chris Van Hollen .....	SACDEM-7



Message

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**From:** Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]  
**Sent:** 1/31/2020 5:26:51 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Palmer, Leif [Palmer.Leif@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission  
**Attachments:** DRAFT Comparison of 2007 Plan 5 and 2019 Plan - 1-31-20.docx

Attorney Client Privileged/Deliberative – Do Not Release

Mary, Lee and David,

Good afternoon. Following up on our call last week, the Yazoo team has developed the attached document examining the 2019 Yazoo Pump submission from the USACE Vicksburg.

Please let us know if you need additional information.

Thanks  
Jeaneanne



Message

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**From:** Andy Gipson [Andy@mdac.ms.gov]  
**Sent:** 2/26/2020 4:38:11 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Chris McDonald [Chris@mdac.ms.gov]  
**Subject:** Yazoo Pumps

Mr. Forsgren,

Good morning, I'm Mississippi's Commissioner of Agriculture and Commerce Andy Gipson. I ran into your colleague Owen McDonough today (who incidentally did a remarkable job explaining the new and greatly improved WOTUS rules) at an agriculture conference I'm attending in D.C.

I'm writing to you at a time and concerning a matter of great urgency - the pending Yazoo Backwater Pumps that would alleviate not all, but some of the historic flooding our farmers and homeowners experienced last year, and tragically are experiencing again right now. With over 440,000 acres underwater today, we are looking at a potential repeat of the historic 7 month flood of 2019.

I'm sincerely asking you and the EPA to please do everything in your power to help our people, our farmers, our neighbors and even our wildlife which are again being devastated by these floods. If my office can assist in any way, we will do so. Any word from you or the EPA on approving the new pump project will provide a glimmer of hope to our people, which frankly is desperately needed at a time such as this.

Thank you so much for your excellent work on WOTUS, and thanks for anything you or your office can do to move the needle on the pumps. Let me know what I can do to help. Thanks!

Sincerely,

Andy Gipson  
601-519-1880

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Message

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**From:** Melissa Samet [sametm@nwf.org]  
**Sent:** 1/24/2020 8:31:32 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**Subject:** RE: Yazoo Pumps: Alternatives Strategy  
**Attachments:** FOIA to EPA\_Yazoo Pumps\_Final\_01-24-20.pdf

Mr. Forsgren,

As another follow-up on my email below, I wanted to let you know that the National Wildlife Federation submitted the attached Yazoo Pumps-focused FOIA to EPA today (we also sent a similar request to the Corps). This FOIA was prompted by recent social media posts by the Corps' Mississippi Valley Division and the Delta Council that highlight ongoing and apparently extensive work being carried out by the Corps to move this project forward.

We of course continue to strongly support EPAs well-founded and extensively-documented veto of this project, and hope that our FOIA will not create an undue burden on EPA staff.

Best Regards,  
--Melissa

Melissa Samet  
Senior Water Resources Counsel  
National Wildlife Federation  
(o) 415-762-8264  
(c) Ex. 6 Personal Privacy (PP)  
[sametm@nwf.org](mailto:sametm@nwf.org)

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**From:** Melissa Samet  
**Sent:** Thursday, January 23, 2020 12:14 PM  
**To:** Forsgren.lee@Epa.gov  
**Cc:** Mejias.melissa@Epa.gov; Frazer.brian@epa.gov; Goodin.john@epa.gov; Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Subject:** Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

I wanted to follow up on my email below to see whether you have had the opportunity to discuss the attached alternatives strategy with the Water Subcabinet and the Corps. As noted, the alternatives outlined in this strategy rely on federal programs that are currently applicable to the Yazoo Backwater Area (YBWA), currently funded, and currently accepting proposals for the use of natural infrastructure and nonstructural measures that would safeguard YBWA communities

A Mississippi Valley Division Facebook post from last week highlights a January 15 Corps and EPA senior leadership meeting in Atlanta that focused on the Yazoo Pumps. Given EPA's extensively documented 404(c) veto (which, as you know, was upheld by the U.S. Court of Appeals for the Fifth Circuit), we are hopeful that the meeting focused on the types of alternative strategies outlined in our proposal, which would certainly qualify as a Least Environmentally Damaging Alternative under the CWA 404(b)(1) Guidelines.

I would appreciate the opportunity to answer any questions you might have about the alternatives strategy and the conservation community's continued opposition to the Yazoo Pumps.



Thank you.

Melissa Samet  
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**From:** Melissa Samet  
**Sent:** Monday, December 16, 2019 2:14 PM  
**To:** [Forsgren.lee@Epa.gov](mailto:Forsgren.lee@Epa.gov); [Mejias.melissa@Epa.gov](mailto:Mejias.melissa@Epa.gov)  
**Cc:** Mastrototaro, Jill <[Jill.Mastrototaro@audubon.org](mailto:Jill.Mastrototaro@audubon.org)>  
**Subject:** Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

As promised when we met last month, I've attached a strategy for providing prompt, cost-effective, and sustainable flood damage reduction to the Yazoo Backwater Area (YBWA) of Mississippi. This strategy relies on federal programs that are currently funded and accepting proposals to quickly deploy natural infrastructure and nonstructural measures to safeguard YBWA communities. The ability to promptly implement these measures makes the unacceptably destructive and costly Yazoo Pumps even more archaic today than when they were vetoed by EPA in 2008.

The National Wildlife Federation and Audubon hope this document proves useful as EPA and the Water Subcabinet assess opportunities for providing long-term, sustainable protections to YBWA communities. I would appreciate the opportunity to discuss this strategy with you any answer any questions you might have.

Thank you.

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Message

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**From:** Melissa Samet [sametm@nwf.org]  
**Sent:** 1/23/2020 8:13:40 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Mastrototaro, Jill [Jill.Mastrototaro@audubon.org]  
**Subject:** Yazoo Pumps: Alternatives Strategy  
**Attachments:** Yazoo Backwater Area Resilience Strategy\_Alternative Solutions\_12-16-19.pdf

Mr. Forsgren,

I wanted to follow up on my email below to see whether you have had the opportunity to discuss the attached alternatives strategy with the Water Subcabinet and the Corps. As noted, the alternatives outlined in this strategy rely on federal programs that are currently applicable to the Yazoo Backwater Area (YBWA), currently funded, and currently accepting proposals for the use of natural infrastructure and nonstructural measures that would safeguard YBWA communities

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I would appreciate the opportunity to answer any questions you might have about the alternatives strategy and the conservation community's continued opposition to the Yazoo Pumps.

Thank you.

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**From:** Melissa Samet  
**Sent:** Monday, December 16, 2019 2:14 PM  
**To:** Forsgren.Lee@Epa.gov; Mejias.melissa@Epa.gov  
**Cc:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Subject:** Yazoo Pumps: Alternatives Strategy

Mr. Forsgren,

As promised when we met last month, I've attached a strategy for providing prompt, cost-effective, and sustainable flood damage reduction to the Yazoo Backwater Area (YBWA) of Mississippi. This strategy relies on federal programs that are currently funded and accepting proposals to quickly deploy natural infrastructure and nonstructural measures to safeguard YBWA communities. The ability to promptly implement these measures makes the unacceptably destructive and costly Yazoo Pumps even more archaic today than when they were vetoed by EPA in 2008.

The National Wildlife Federation and Audubon hope this document proves useful as EPA and the Water Subcabinet assess opportunities for providing long-term, sustainable protections to YBWA communities. I would appreciate the opportunity to discuss this strategy with you any answer any questions you might have.



Thank you.

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# **A Resilience Strategy for the Yazoo Backwater Area**

## **December 2019 Discussion Draft**

This document provides information on natural infrastructure and non-structural measures to reduce flood risks and increase community resilience in the Yazoo Backwater Area (YBWA) of Mississippi. Large-scale implementation of these measures can be achieved through the strategic use of federal programs that are currently funded, accepting proposals, and available to assist communities in the YBWA.

Flooding in the YBWA is primarily restricted to the lowest lying areas. From 1978 to 2018, water levels in the YBWA reached the 10-year floodplain elevation just 2 times, and never reached the 20-year floodplain elevation.<sup>1</sup> During the unprecedented flooding in 2019, water levels in the YBWA were primarily restricted to the 20-year floodplain, rising less than a quarter of an inch into the 25-year floodplain for 8 days before receding.

Wetlands in the YBWA play an essential role in minimizing flood damages, providing vital habitat to hundreds of species of fish and wildlife, and supporting wildlife-related recreation. Recognizing these many benefits, the George W. Bush Administration acted to protect 67,000 acres of the YBWA's ecologically significant natural wetland infrastructure by issuing a Clean Water Act 404(c) Final Determination for the Yazoo Backwater Pumping Plant.<sup>2</sup> This 2008 action paved the way for the long-term protection of an additional 53,300 acres of YBWA wetlands through conservation easements and other voluntary mechanisms. These protected wetlands safeguard YBWA communities by storing tens of billions of gallons of floodwaters.

Section I of this document recommends targets for additional natural infrastructure and non-structural measures to reduce flood risks and increase resilience in the YBWA, and details federal programs that are funded and available today to help implement those measures. Section II outlines key data and information needed to maximize the informed and effective use of these federal programs in the YBWA.

### **I. Federal Programs Available to Reduce Flood Risks and Increase Resilience in the Yazoo Backwater Area**

Numerous federal programs are currently funded, accepting proposals, and available to advance the large-scale use of natural infrastructure and non-structural measures to reduce flood risks and increase resilience in the YBWA. These programs, and targets for their use, are outlined below. Successful deployment of these programs will require robust engagement with YBWA communities and collection of the data and information outlined in Section II.

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<sup>1</sup> This period of record follows completion of the Yazoo Backwater Area Levee in 1978. By comparison, flooding in the YBWA reached 101.48 feet in 1973, which is well above the 100 year floodplain elevation. [U.S. Army Corps of Engineers Rivergages Website.](#)

<sup>2</sup> While the 2019 flooding has prompted a renewed push for the Yazoo Pumps, preliminary Corps of Engineers' data shows that at least 68% of lands flooded in 2019 would have remained flooded if the Yazoo Pumps had been built and able to operate.



Reducing Flood Risks and Improving Resilience in the Yazoo Backwater Area Federal Programs Currently Funded and Accepting Proposals				
Federal Program	Structures	Agricultural Lands	Community Facilities	Roads, Bridges Utility Systems
Wetland Reserve Easements (WRE) USDA		✓		
Floodplain Easement Program USDA	✓	✓		
Hazard Mitigation Grant Program (HMGP) FEMA – Post-Disaster Recovery	✓		✓	✓
Community Facilities Grant Program USDA – Post-Disaster Recovery	✓		✓	
Pre-Disaster Mitigation Program (PDM) FEMA – Pre-Disaster Mitigation	✓		✓*	✓
Flood Mitigation Assistance (FMA) FEMA – Pre-Disaster Mitigation	✓		✓*	✓

\*With some limitations. Additional programs, including the FEMA Community Development Block Grants-Disaster Recovery Program, could become available through supplemental appropriations.

Effective implementation of these programs would add to the region's rich natural resource base and create more resilient communities. These benefits could be amplified by an innovative marketing campaign to drive wildlife and cultural heritage-associated tourism to the YBWA developed in collaboration with the Mississippi Delta National Heritage Area, the Delta Blues Trail, the Delta National Forest, and the Theodore Roosevelt National Wildlife Refuge Complex. The Delta Interpretive Center, which will be housed in the newly constructed Theodore Roosevelt Wildlife Refuge Visitor Center, could be a centerpiece of this effort.<sup>3</sup> Funding for such a campaign could be sought through the Mississippi Delta National Heritage Area Grant Program.<sup>4</sup>

Diversifying the economy of the YBWA in this manner would assist in arresting and reversing the region's economic decline. In 2011, state residents and nonresidents spent \$2.63 billion on wildlife recreation in Mississippi. Of that total, \$650 million was spent on trip-related expenditures, \$1.7 billion

<sup>3</sup> The Theodore Roosevelt Wildlife Refuge Visitor Center is "one of the most significant investments in tourism infrastructure" in the Delta.

<sup>4</sup> The Mississippi Delta National Heritage Area, which includes all the YBWA counties, was established by Section 8008 of the Omnibus Federal Land Management Act of 2009, Pub. L. 111–11 (16 USC 461 note) to preserve and promote the landscape, culture and history of the Mississippi Delta. Section 8008 authorizes appropriations of up to one million dollars a year through 2024, and establishes a management authority and a local coordinating entity to assist local governments, regional planning organizations, and nonprofit organizations in developing recreational and educational opportunities in the Heritage Area and increasing public awareness of, and appreciation for, natural, historic, scenic, and cultural resources of the Heritage Area.



was spent on equipment, and \$268 million was spent on licenses, leases, and other items. U.S. Fish and Wildlife Service, 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, Table 47. The demand for wildlife-related recreation is increasing nationwide, and directing more of this demand to the YBWA could produce significant economic benefits.

## 1. Wetland Reserve and Floodplain Easement Programs (USDA)

**Target:** Enroll at least **70,000 acres** of Yazoo Backwater Area lands in the Wetland Reserve Easement and Floodplain Easement Programs managed by the U.S. Department of Agriculture. Wetland reserve easements should target marginal croplands (those with 4W+ soils) adjacent to existing conservation lands, and marginal croplands inundated during the 2019 floods. Floodplain easements should target those same lands and/or frequently flooded residential properties, particularly “severe repetitive loss” and “repetitive loss” properties as defined by the Federal Emergency Management Agency.

**Responsible Federal Agency and Partners:** U.S. Department of Agriculture (Natural Resources Conservation Service) working with local landowners, homeowners, and non-governmental organizations.

**Funding:** Both programs are currently funded and accepting proposals for enrollment.

**Benefits:** As highlighted in Attachment A to this document, natural infrastructure is highly effective at reducing flood and storm risks for communities. Extensive public benefits include significantly reducing flood risks and emergency response costs, creating safer and healthier communities, and restoring vital floodplain habitat. A single acre of wetland can store one million gallons of floodwater. Wetlands purify water supplies, reduce nutrient loading into streams and rivers, and recharge groundwater supplies. Wetlands provide vital wildlife habitat, and restoring bottomland hardwood wetlands in the YBWA is a priority for achieving the forest bird population goals for the Lower Mississippi Valley Joint Venture. Protecting and restoring floodplain wetlands can significantly lower federal flood insurance rates for communities participating in the National Flood Insurance Program Community Rating System. Restoring enrolled lands creates jobs and economic outputs. Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. Landowners receive direct payments for enrolling their lands.

### Wetland Reserve Easement Program (WRE):

- Cropped and forested lands can be enrolled in WRE. Enrolled lands are taken out of agricultural production and restored to wetlands.
- Enrollment provides direct payments to landowners, currently up to \$3,100 per acre. USDA also pays to restore the enrolled lands. Landowners can make additional profits by selling or leasing the land for hunting, fishing, or other uses compatible with maintaining the restoration. Landowners may also be eligible for a tax deduction.
- 4W+ lands are classified by USDA as “severely limited” for agriculture because they are saturated at least 50% or more of the growing season. Because of these limitations, the 2014 Farm Bill exempted 4W+ lands from WRE enrollment caps. 4W+ lands also do not count towards county-wide WRE caps.
- **More than 296,000 acres** in the YBWA are classified by USDA as 4W+ lands, and as a result could be enrolled in WRE. In 2019, **62,042 acres** of 4W+ lands were inundated in Issaquena, Sharkey, and Warren counties. Most 4W+ lands in the YBWA **adjoin existing conservation lands**.



- Detailed GIS-based information on 4W+ soils and conservation lands in the YBWA is provided in a series of maps included in Attachment B to this document.
- The WRE program is extremely popular in Mississippi. At least 186,000 acres have been enrolled in the WRE program in Mississippi (in both the Wetlands Reserve Program and WRE programs which are now combined), and there is strong interest in enrolling more acres into the program.

#### Floodplain Easements:

- Both cropland and residential properties may be enrolled in the USDA Floodplain Easement program. Cropped lands are taken out of agricultural production and restored. Structures located within the area of a floodplain easement are demolished and removed, or relocated outside of the affected floodplain, and the lands are then restored.
- Enrollment provides direct payments to landowners, currently up to \$3,100 per acre. USDA pays to restore the enrolled lands. USDA also pays the costs of demolishing and removing, or relocating structures out of the affected floodplain. Landowners can make additional profits by selling or leasing the land for hunting, fishing, or other uses compatible with maintaining the restoration. Landowners may also be eligible for a tax deduction.
- A significant amount of funding is currently available for the purchase of floodplain easements in Mississippi (and numerous other states).

#### Additional Information:

- **Easement Payment Schedule:** In Mississippi, payments for enrolling lands in the WRE and Floodplain Easement Programs are the same. Easement purchase prices on forested land are slightly less than on cropland. The payment schedule is established by USDA on a yearly basis and may fluctuate slightly from year to year.
- **Agency Capacity:** Enrolling 70,000 acres of easements would be facilitated by adding staff capacity within the USDA Natural Resources Conservation Service to assess and process easement proposals.
- **Jobs and Economic Activity:** Restoration work associated with easement enrollment would create jobs. In Mississippi, the Fish and Wildlife Service Partners for Wildlife Program created 29.7 jobs for each million dollars spent on restoration, and \$1.63 of economic activity for each dollar spent on restoration in FY2011. U.S. Fish and Wildlife Service, *The Contribution of Partners for Fish and Wildlife Program and Coastal Program Restoration Projects to Local U.S. Economies* (September 2013) at 18.
- **Groundwater Recharge:** Restoring enrolled lands would provide critically important groundwater recharge benefits to the YBWA. Irrigation in the Mississippi Delta, including the YBWA, has caused some of the most severe groundwater declines in the United States and highly damaging low-flow conditions in many Delta streams. Recent studies demonstrate the significant value of wetlands to groundwater recharge in the YBWA. Ying Ouyanga, et al., *Estimating impact of forest land on groundwater recharge in a humid subtropical watershed of the Lower Mississippi River Alluvial Valley*, Journal of Hydrology: Regional Studies 26 (2019) 100631 (wetlands in the lower Yazoo River Basin provide the highest rates of groundwater recharge while agricultural lands provide the lowest rates); Michael Gratzer, et al., *Quantifying Recharge to the Mississippi River, Valley Alluvial Aquifer from Oxbow Lake-Wetland Systems*,



(2017) (oxbow lake wetlands near Belzoni, MS produce “significant vertical recharge” into the Mississippi River Valley Alluvial Aquifer).

- **National Flood Insurance Program Rate Reductions:** Protecting floodplains has the largest impact on lowering National Flood Insurance Program (NFIP) rates for communities participating in the voluntary Community Rating System Program (CRS). Participation in the CRS can reduce NFIP rates from 15% to 45%. The CRS credits over 90 elements of comprehensive floodplain and watershed management, including providing significant credits for protecting the natural functions of riverine floodplains by preserving natural floodplain open space, acquiring flood-prone land and returning it to its natural state, and protecting and restoring natural floodplain functions and habitat.
- **Cost Avoidance Benefits:** Enrolling cropped wetlands in WRE reduces the costs of commodity, federal crop insurance, and noninsured crop disaster assistance programs. A recent study documents these avoidance benefits (present value of avoided costs less the Wetlands Reserve easement and restoration costs) in Mississippi at \$870 per acre. *Wetland Reserve Easement Program Economic Assessment: Estimated Commodity Program and Crop Insurance Premium Subsidy Cost Avoidance Benefits*, Prepared for the Nature Conservancy (June 2, 2018) (authored by retired U.S. Department of Agriculture economist Dr. Doug Lawrence).
- **Ad Valorem Tax Offsets:** To offset potential losses of ad valorem taxes that could result from placing YBWA county cropland under easements, landowners (or through enactment of legislation, USDA) could make a one-time payment to the county as easements are enrolled equal to a very small percentage of the cost of the easement. The county could then place the funds in trust and draw upon the interest of the trust to offset losses in ad valorem taxes.

## 2. Post-Disaster Recovery Programs (FEMA, USDA, HUD)

**Target:** Prioritize existing disaster recovery funds to voluntary buy-outs and elevations of “severe repetitive loss” and “repetitive loss” properties in the YBWA, and improve essential community infrastructure. Key targets include the **198** severe repetitive loss properties in Issaquena and Sharkey counties (150 in Issaquena, 48 in Sharkey), and any of the **1,191** severe repetitive loss properties located in the YBWA portions of Warren, Washington, and Humphreys counties (total severe repetitive loss properties are 833 in Warren, 314 in Washington, 44 in Humphreys).

**Responsible Federal Agencies and Partners:** Federal Emergency Management Agency, U.S. Department of Agriculture, U.S. Department of Housing and Urban Development (depending on program used), working with the State of Mississippi, local governments, property owners, and residents.

**Funding:** The FEMA Hazard Mitigation Grant Program is currently funded and accepting applications for the YBWA. The USDA Community Facilities Grant Program is currently funded and accepting applications. Supplemental appropriations targeted to the YBWA would be required to take advantage of the HUD Community Development Block Grants – Disaster Recovery program.

**Benefits:** Significant public benefits, including reducing flood risks and emergency response costs, creating safer and healthier communities, and restoring vital floodplain habitat. Increasing the resilience of roads and other community infrastructure improves community well-being and supports



economic development. Homeowners are compensated for moving out of harm's way or elevating homes and other structures to avoid future flood damages.

**FEMA Hazard Mitigation Grant Program (HMGP):**

- The HMGP provides grants to state and local governments in areas covered by a Presidential disaster declaration. These grants can be used to purchase flood-damaged properties from willing sellers at pre-flood values and preserve the land as open space, or to elevate structures.
- The YBWA is eligible for HMGP grants through the April 23, 2019 Federal Disaster Declaration 4429, which made FEMA's HMGP available to the entire state of Mississippi. FEMA accepts HMGP applications for **one year** after a federal disaster declaration with the possibility of up to a 180-day extension at the state's request.
- Any structure in the 100-year floodplain (*i.e.*, a Special Flood Hazard Area) valued at up to \$276,000 automatically qualifies for a FEMA-funded buy-out, and any structure in a Special Hazard Area valued at up to \$175,000 automatically qualifies for a FEMA-funded elevation. Other structures may also qualify if a benefit-cost analysis shows that a buy-out or elevation would be cost-effective.
- FEMA has funded **638 buy-outs in Mississippi, including 105 in Warren County**, since the 1980s.

**USDA Community Facilities Grant Program:**

- The USDA Community Facilities Grant Program provides grants to rural communities with up to 20,000 residents in areas covered by a Presidential disaster declaration. Funding under this grant program can be used to advance more than 100 types of projects, including the purchase, construction, or improvement of essential community facilities. Essential community facilities include such things as health care facilities, town halls, courthouses, community centers, fairgrounds, police and fire departments, libraries, museums, and food banks.
- USDA recently announced the availability of \$150 million to fund grants under this program.

**HUD Community Development Block Grants – Disaster Recovery (CDBG-DR):**

- CDBG-DR grants supplement FEMA disaster recovery funds to help cities, counties, and states recover from Presidentially-declared disasters, especially in low-income communities. Activities funded through these flexible grants must meet one of three national objectives: benefit low-and-moderate-income persons; aid in the prevention or elimination of slums or blight; or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.
- Mississippi is currently finishing up two CDBG-DR grants for Hurricane Katrina recovery (\$5.06 billion and \$423 million) and a third CDBG-DR grant for recovery from the storms of 2008 (\$11.7 million), and appears to have some unspent monies remaining.
- The Bipartisan Budget Act of 2018 approved \$12 billion in funding for a new Community Development Block Grant disaster fund focused on helping CDBG-DR grant recipients “carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses” including among many other things, supporting data-informed investments in high-impact mitigation projects, building state and local government capacity for comprehensively analyzing disaster risks, and supporting the adoption of policies that minimize future disaster costs. While Mississippi has not received an allocation under this fund to date, a second round of allocations will be taking place and future appropriations are likely.



- CDBG-DR grants require supplemental appropriations to HUD. Advocating for CDBG-DR funding for the YBWA could result in a significant source of additional funding to assist in recovery.

**Additional Information:**

- **Disaster Declaration:** The April 23, 2019 Federal Disaster Declaration 4429 made FEMA's HMGP applicable to the entire state of Mississippi. Multiple amendments were made to that declaration, with the last amendment issued on September 20, 2019. The Mississippi Emergency Management Agency has clarified that the declaration covers the 2019 YBWA flood.
- **Severe Repetitive Flood Loss Properties:** A map of severe repetitive loss properties by county in the YBWA is provided at Attachment C to this document. "Severe repetitive loss properties" are properties covered by the National Flood Insurance Program that have flooded repeatedly and are priorities for elevation or removal. These structures, which are mostly homes, have been the subject of four or more damage claims of more than \$5,000 each, or two or more claims in which the insured structure sustained cumulative damage exceeding its fair market value. FEMA can provide the precise number of severe repetitive loss properties within the YBWA.
- **Repetitive Flood Loss Properties:** "Repetitive loss properties" are properties covered by the National Flood Insurance Program that have flood-related damage on two occasions where the cost of the repair equaled or exceeded 25% of the market value of the structure at the time of each such flood event; and the second incidence of flood-related damage increased the cost of flood-insurance compliance coverage. FEMA can provide the precise number of repetitive loss properties within the YBWA.
- **Typical Timeline for FEMA Buy-Outs:** Approximately 70% of FEMA buy-out projects are approved within two years of the associated disaster. More than half of all buyout projects have taken more than 5 years to closeout. NRDC, *Going Under: Long Wait Times for Post-Flood Buyouts Leave Homeowners Underwater* (September 2019).
- **History of FEMA Buy-Outs:** Since the 1980s, FEMA has funded 638 buy-outs in Mississippi, including 105 in Warren County. In all, FEMA has funded the buy-out of more than 43,360 properties through 3,839 "projects" in 49 states. Of these properties, 96% suffered from river flooding or intense rains, while 4% suffered from coastal flooding. The HMGP has funded 96% of all FEMA buy-outs. Buy-outs disproportionately occur in white communities rather than communities of color, according to a 2019 NPR investigation. For example, after the 2008 floods in Iowa, "households in high social vulnerability areas were less likely to obtain full financial compensation" from federally funded buyout programs and waited longer to receive acquisition funds. NRDC, *Going Under: Long Wait Times for Post-Flood Buyouts Leave Homeowners Underwater* (September 2019) at 10, 8, 6.



### 3. Pre-Disaster Mitigation Programs (FEMA)

**Target:** Significantly expand pre-disaster mitigation planning and protection in the YBWA to reduce the risk of damage from future high water events and increase community resilience, and provide free Flood Risk Management Workshops in the YBWA for interested parties.

**Responsible Federal Agency and Partners:** Federal Emergency Management Agency working with the State of Mississippi, local governments, and non-governmental organizations.

**Funding:** FEMA's Pre-Disaster Mitigation Grant Program and Flood Mitigation Assistance Programs are currently funded and accepting proposals. FEMA will provide free Certified Floodplain Management training upon request.

**Benefits:** Significant public benefits through creation of safer communities by improving resiliency, eliminating impacts of future flood events, and providing long-term solutions to flooding problems. Effective pre-disaster mitigation reduces loss of life and property damage from future floods, minimizes flood disaster disruptions, and allows more rapid recovery when flooding does occur. On average, \$1 spent on hazard mitigation through a federally funded mitigation grant saves \$6 in future disaster costs. Federal grants provide \$7 in benefits for each \$1 invested in riverine flood mitigation.

#### FEMA Pre-Disaster Mitigation Grant Program:

- The Pre-Disaster Mitigation (PDM) program provides funding to states, tribes, and local governments to reduce overall risk to the population and structures from future hazard events while also reducing reliance on federal funding to recover from future disasters. The PDM program typically covers up to 75% of eligible activity costs, but small and impoverished communities may be eligible for coverage of up to 90% of eligible costs.
- Following this current funding cycle, the PDM program will transition into the Building Resilient Infrastructure and Communities (BRIC) program established by the Disaster Recovery Reform Act of 2018. The BRIC program will be funded through a 6% equivalency set-aside of all disaster expenditures from the Disaster Relief Fund. This should significantly increase the amount of funding available for pre-disaster mitigation efforts.
- FEMA has \$250 million available for distribution under the PDM program for FY19. The deadline for submitting requests under this cycle is January 31, 2020.

#### FEMA Flood Mitigation Assistance Program:

- The Flood Mitigation Assistance (FMA) Program provides funding to states, tribes, and local governments to reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program. FMA funding may cover up to 100% of costs to address severe repetitive loss properties and up to 90% of costs to address repetitive loss properties. Other activities will be funded up to 75%.
- FEMA has \$70 million available for distribution under the FMA program for FY19. The deadline for submitting applications under the current cycle is January 31, 2020.

#### Free Certified Floodplain Management Training:

- FEMA will provide free Flood Risk Management Workshops and Certified Floodplain Manager (CFM) Exams to equip participants with important information on reducing flood risks and career skills. The CFM program seeks to reduce flood risk for people and encourage flood



resilient development through multi-benefit floodplain management. Trainings include information on the National Flood Insurance Program, including its history, standards, regulations and administration; floodplain mapping; flood hazard mitigation; and floodplain management for environmental benefits. FEMA could also provide additional relevant trainings in the YBWA through its Integrated Emergency Management Course.

- The NGO community could work with foundations and others to obtain scholarship funding to defray out-of-pocket costs for attendees, including travel expenses, lost wages, and daycare. A free 4-day FEMA-run Flood Risk Management Workshop and CFM exam with NGO-generated scholarships opportunities will be held January 14-17, 2020 in Moline, IL. Participants from the YBWA are encouraged to attend and apply for scholarships.
- The state, local governments, or others could request that FEMA provide free Flood Risk Management Workshops and CFM exams at locations in the YBWA.

## **II. Information Essential to Effective Flood Damage Reduction and Hazard Mitigation Planning in the Yazoo Backwater Area**

Prompt collection of at least the data and information outlined below will be critical to maximizing the informed and effective use of the programs discussed in Section I to increase resilience in the YBWA. The State of Mississippi and local governments should work with FEMA, the Mississippi Emergency Management Agency, USDA, other federal agencies, and the NGO community to obtain this information.

### **Homes and Other Structures**

- For each structure flooded in 2019, obtain: precise location data, elevation data, level and length of inundation, total estimated structure value, estimated damages, and purpose of structure (*e.g.*, home, business, warehouse, community facility). Differentiate between structures that flooded and structures that could not be accessed because of roadway flooding or other access issues.

### **Eagle Lake After-Action Report:**

- Conduct a detailed after-action assessment of the cause of the 2019 Eagle Lake area flooding to ensure a meaningful evaluation of opportunities for reducing flood risks at Eagle Lake.
- Backwater flooding alone could not have caused the 2019 flooding at Eagle Lake. During the 2019 flood, water levels never exceeded the 98.23 foot elevation. However, according to the Corps' 2000 structure inventory database, all homes and structures in the Eagle Bend Quad are located at the 102.7 foot elevation—well above the 2019 flood elevation and well above the hundred year floodplain elevation of 100.3 feet. Factors that likely influenced Eagle Lake flooding include the Lake's water control management regime and its location abutting a portion of the Mississippi River mainline levee.

### **Roads, Bridges, and Essential Community Infrastructure:**

- Obtain precise data on the location, elevation, duration, and extent of flooding that affected roads, bridges, and other transportation infrastructure in 2019 and other recent flood events.
- Obtain precise data on the location, elevation, duration, and extent of flooding that affected water and wastewater treatment facilities, medical facilities, churches, schools, and other essential community infrastructure that flooded in 2019 and other recent flood events.
- Obtain information on needed upgrades to essential community infrastructure that flooded in 2019 or other recent flood events.



Attachment A  
Natural Infrastructure Success Stories  
A Resilience Strategy for the Yazoo Backwater Area



## Natural Infrastructure Reduces Flood Risks

There is ample evidence that natural infrastructure is highly effective at reducing flood and storm risks for communities. For example:

- In the Gulf Coast regions of Texas, Louisiana, Mississippi, and Florida, nature-based solutions to reduce coastal flood risks are significantly more cost effective than structural solutions. A 2018 study shows that in this region, the average benefit-cost ratio for nature-based solutions is 3.5 compared to 0.26 for levees/dikes and 0.73 for home elevations. Restoring wetlands could prevent \$18.2 billion of losses while costing just \$2 billion to carry out.<sup>1</sup>
- In California, the Napa Valley Flood Control Project is using a community-developed “living river” plan to reduce flood damages along the flood-prone Napa River. This plan replaces the Corps’ originally-proposed floodwalls and levees with terraced marshes, wider wetland barriers, and restored riparian zones. The Project will restore more than 650 acres of high-value tidal wetlands of the San Francisco Bay Estuary while protecting 2,700 homes, 350 businesses, and over 50 public properties from 100-year flood levels, saving \$26 million annually in flood damage costs.<sup>2</sup> Though only partially complete, the project was credited for lowering flood levels by about 2 to 3 feet during the 2006 New Year’s Day flood.
- In Florida, the Corps is using wetland restoration in the Upper St. John’s River floodplain to provide important flood damage reduction benefits. The backbone of this project is restoration of 200,000 acres of floodplain which will hold more than 500,000 acre-feet of water—enough to cover 86 square miles with 10 feet of water—and will accommodate surface water runoff from a more than 2,000 square mile area. The Corps predicts that this \$200 million project will reduce flood damages by \$215 million during a 100-year flood event, and provide average annual benefits of \$14 million. This project was authorized by Congress in 1986 to reduce flood damages along the river.
- In Illinois, a 2014 study conducted for the Chicago Wilderness Green Infrastructure Vision, found that natural systems are the least costly and most efficient way to control flooding. Wetlands in the seven-county Chicago metropolitan area provide an average \$22,000 of benefits per acre each year in water flow regulation. This study also found that watersheds with 30 percent wetland or lake areas saw flood peaks that were 60 to 80 percent lower than watersheds without such coverage, and that preventing building in floodplain areas could save an average of \$900 per acre per year in flood damages.<sup>3</sup>
- In Iowa, the purchase of 12,000 acres in easements along the 45-mile Iowa River corridor saved local communities an estimated \$7.6 million in flood damages as of 2009. The easement purchase effort began after the historic 1993 floods when river communities in east-central Iowa recognized the need for a more effective approach to reducing flood damages.
- In Massachusetts, a 1972 Corps study showed that upstream wetlands were playing a critical role in reducing flooding in the middle and upper reaches of the Charles River by storing millions of gallons of water and preventing \$17 million each year in flood damages. This led the Corps to preserve 8,000 floodplain acres to ensure future flood storage, at a cost of just one-tenth of the structural project it had previously planned to build. These floodplain wetlands are credited with reducing major floods, including in 1979, 1982, and 2006. The Corps estimates that this project has



prevented \$11.9 million in flood damages while providing recreational benefits valued at between \$3.2 and \$4.6 million.<sup>4</sup>

- In Missouri, state agencies and local communities acquired more than 4,000 properties after the 1993 floods to reduce future flood damages and conserve natural and recreational resources. The Meramec Greenway in St. Louis County, which was created through some of those floodplain acquisitions, protects 2,180 acres of the Meramec River's floodplain and avoids an estimated \$8.51 million in average annual flood damages while also increasing property values by an estimated \$26.07 million, far outweighing the estimated annual \$19 million opportunity cost.<sup>5</sup>
- In New York, restoration of wetlands and lands adjacent to 19 stream corridors in Staten Island "successfully removed the scourge of regular flooding from southeastern Staten Island, while saving the City \$300 million in costs of constructing storm water sewers."<sup>6</sup> Some 400 acres of freshwater wetland and riparian stream habitat has been restored along 11 miles of stream corridors that collectively drain about one third of Staten Island's land area. A 2018 study commissioned by the City of New York found that using "hybrid infrastructure" that combines nature, nature-based, and gray infrastructure together could save Howard Beach, Queens \$225 million in damages in a 100-year storm while also generating important ecosystem services.<sup>7</sup>
- In Oregon, the Portland Bureau of Environmental Services restored 63 acres of wetland and floodplain habitat, restored 15 miles of Johnson Creek, and move structures out of high risk areas to reduce flood damages in the Johnson Creek neighborhood. In January 2012, when heavy rainfall caused Johnson Creek to rise two feet above its historic flood stage, the restored site held the floodwaters, keeping nearby homes dry and local businesses open. An ecosystem services valuation of the restored area found that the project would provide \$30 million in benefits (in 2004 dollars) over 100 years through avoided property and utility damages, avoided traffic delays, improved water and air quality, increased recreational opportunities, and healthy fish and wildlife habitat.<sup>8</sup>
- In Texas, restoration of a 178-acre urban wetland—formerly an abandoned golf course—acted as a sponge to store 100 million gallons of water during Hurricane Harvey, protecting 150 homes in Houston's Clear Lake community from serious flooding. This project will store up to a half billion gallons of water and protect up to 3,000 homes when it is completed in 2021.<sup>9</sup>
- In Vermont, a vast network of floodplains and wetlands, including those protected by 23 conservation easements protecting 2,148 acres of wetland along Otter Creek, saved Middlebury \$1.8 million in flood damages during Tropical Storm Irene, and between \$126,000 and \$450,000 during each of 10 other flood events. Just 30 miles upstream, in an area without such floodplain and wetland protections, Tropical Storm Irene caused extensive flooding to the city of Rutland.

#### Endnotes

<sup>1</sup> Borja G. Reguero et al., "Comparing the Cost Effectiveness of Nature-Based and Coastal Adaptation: A Case Study from the Gulf Coast of the United States," PLoS ONE 13, no. 4 (April 11, 2018),

<https://doi.org/10.1371/journal.pone.0192132>.

<sup>2</sup> Napa County California website at <https://www.countyofnapa.org/1096/Creating-Flood-Protection>.

<sup>3</sup> Will Allen, Ted Weber, and Jazmin Varela, *Green Infrastructure Vision: Version 2.3: Ecosystem Service Valuation*.

(The Conservation Fund: 2014), 13-15, [https://datahub.cmap.illinois.gov/dataset/c303fd2e-beaf-4a75-a9ec-b27c6da49b69/resource/028c9b69-bb19-425e-bb92-](https://datahub.cmap.illinois.gov/dataset/c303fd2e-beaf-4a75-a9ec-b27c6da49b69/resource/028c9b69-bb19-425e-bb92-3d33656bea4c/download/tcfcmappiv23ecosystemservicesfinalreport201412v2.pdf)

[3d33656bea4c/download/tcfcmappiv23ecosystemservicesfinalreport201412v2.pdf](https://datahub.cmap.illinois.gov/dataset/c303fd2e-beaf-4a75-a9ec-b27c6da49b69/resource/028c9b69-bb19-425e-bb92-3d33656bea4c/download/tcfcmappiv23ecosystemservicesfinalreport201412v2.pdf).



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<sup>4</sup> American Rivers, *Unnatural Disasters, Natural Solutions: Lessons From the Flooding of New Orleans* (2006) (Charles River Valley Natural Storage Area case study); and

<https://www.arcgis.com/apps/MapJournal/index.html?appid=0bf97d033a8642b18c2e8075d4b5ecfe>.

<sup>5</sup> Carolyn Kousky and Margaret Walls, "Floodplain conservation as a flood mitigation strategy: Examining costs and benefits," *Ecological Economics* 104 (2014): 119-124, <https://doi.org/10.1016/j.ecolecon.2014.05.001>; see also <https://media.rff.org/documents/RFF-DP-13-22-REV.pdf>. Values in this example have been adjusted for inflation to 2019 dollars from the 2013 dollars in the original study (\$7.7 million, \$23.6 million, and \$17.2 million, respectively).

<sup>6</sup> Cooper Union, Institute for Sustainable Design, *The Staten Island Bluebelt: A Study In Sustainable Water Management* (<http://cooper.edu/isd/news/waterwatch/statenisland>). These effort was started in 1990.

<sup>7</sup> The Nature Conservancy, *Urban Coastal Resilience: Valuing Nature's Role*. (2015), <https://www.nature.org/content/dam/tnc/nature/en/documents/urban-coastal-resilience.pdf>.

<sup>8</sup> "Johnson Creek Restoration, Portland, Oregon," Naturally Resilient Communities, accessed November 12, 2019, <http://nrcsolutions.org/johnson-creek-restoration-portland-oregon/>.

<sup>9</sup> Exploration Green, 2018, <https://www.explorationgreen.org/>.



Attachment B  
Conservation and 4W+ Lands in the YBWA  
A Resilience Strategy for the Yazoo Backwater Area



# CONSERVATION LANDS AND 4W+ LANDS

## CONSERVATION LANDS

A majority of conservation lands in the Yazoo Backwater Area have been established on the wettest lands, commonly called "4W+" lands. Most of the remaining 4W+ lands adjoin conservation lands. Public and private conservation lands in the Yazoo Backwater Area increased by 53,355 acres from 2005 to 2019, according to publicly available data. The Yazoo Backwater Area covers approximately 926,000 acres. Conservation lands now cover 28 percent of the Yazoo Backwater Area.

264,124

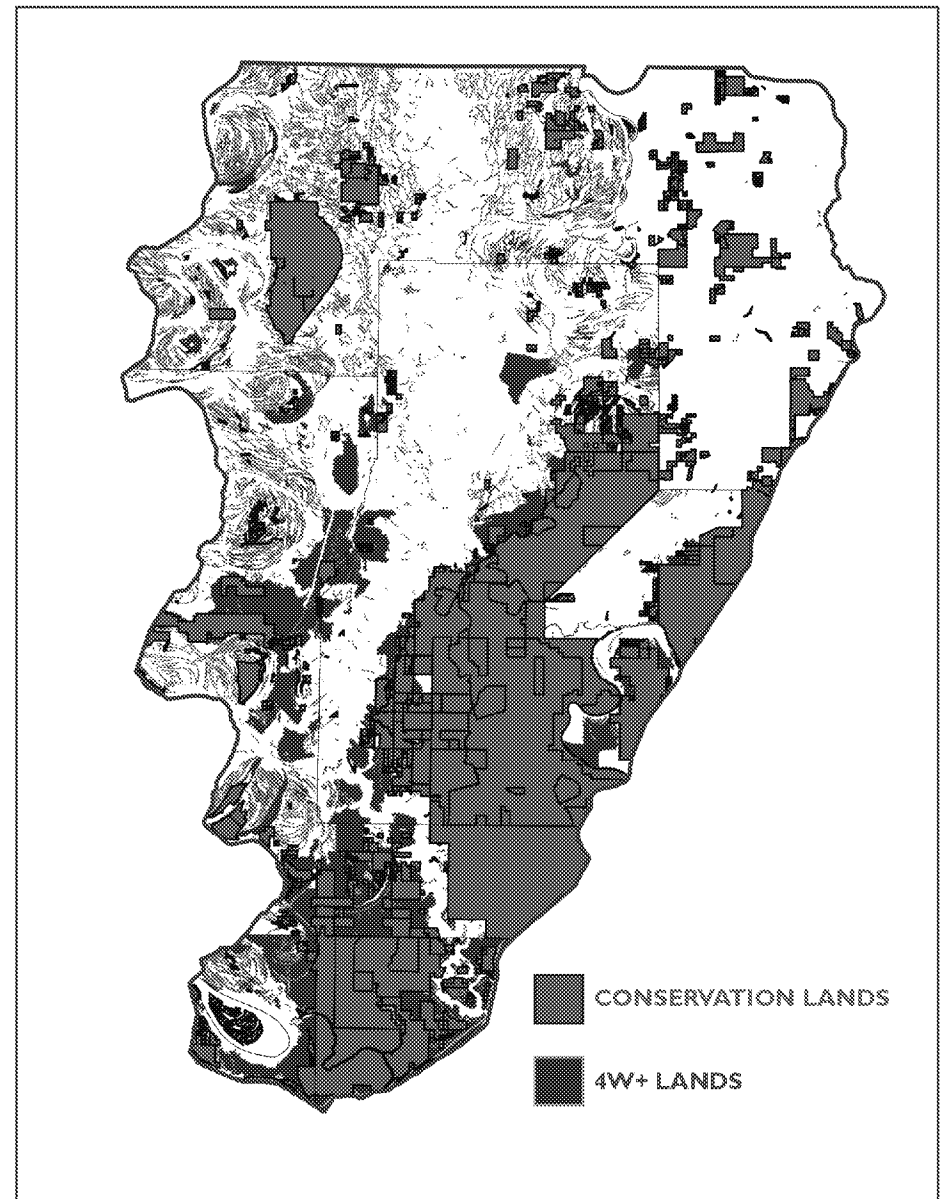
Acres of public and private conservation lands in the Yazoo Backwater Area

## 4W+ LANDS

Lands rated as "severely limited" for agriculture because they are saturated at least 50 percent or more of growing seasons are commonly called "4W+" lands. These are the wettest lands under the U.S. Department of Agriculture's Land Capability Classification system. These lands were exempted from county caps on Wetland Reserve Easements by the 2014 Farm Bill, and reforestation of these lands is a conservation priority. These lands cover 32 percent of the Yazoo Backwater Area.

296,126

Acres of 4W+ lands in the Yazoo Backwater Area



PREPARED OCTOBER 2019



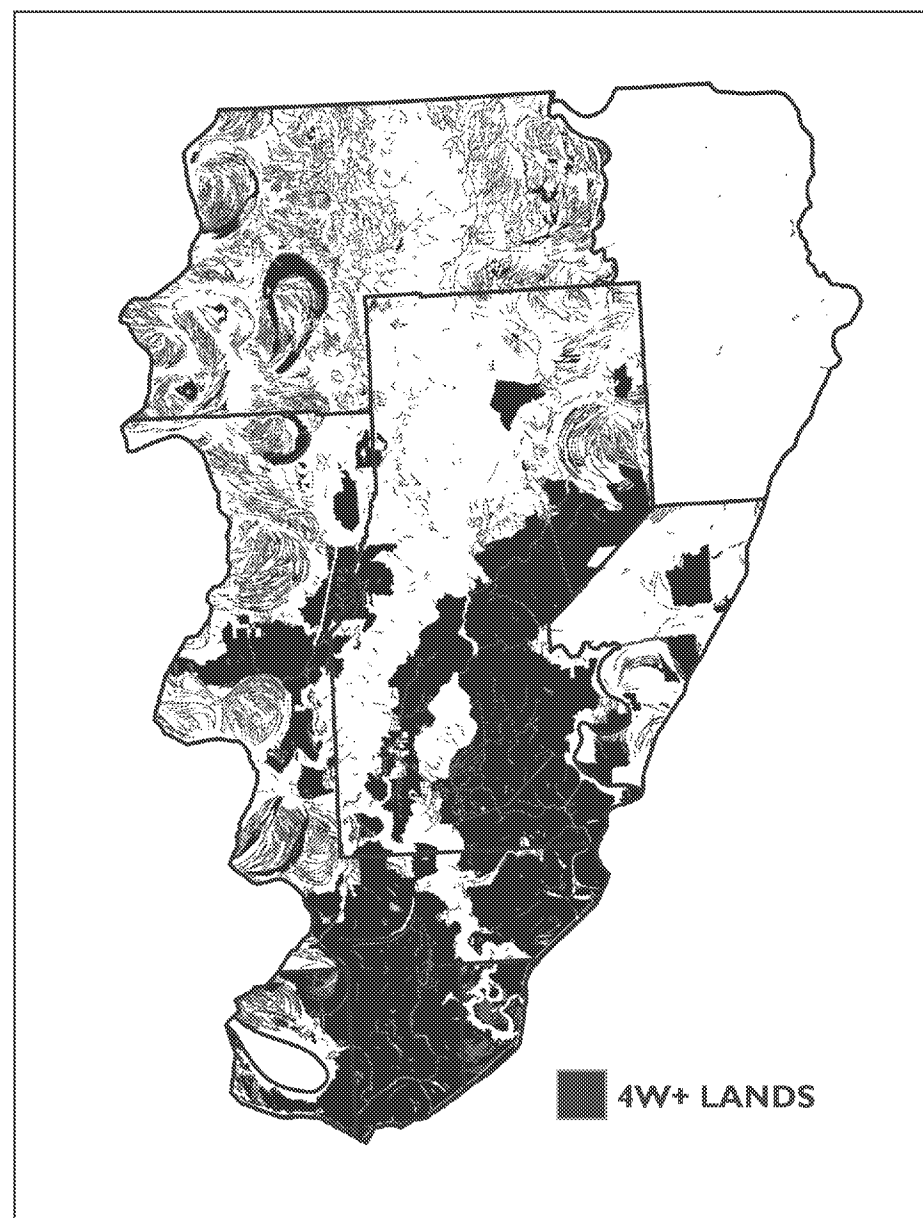
# YAZOO BACKWATER AREA 4W+ LANDS

COUNTY	ACRES IN BACKWATER AREA
HUMPHREYS	136
ISSAQUENA	113,577
SHARKEY	113,249
WARREN	23,966
WASHINGTON	34,379
YAZOO	10,819
TOTAL	296,126

**L**ands rated as “severely limited” for agriculture because they are saturated at least 50 percent or more of growing seasons are commonly called “4W+” lands. These are the wettest lands under the U.S. Department of Agriculture’s Land Capability Classification system. These lands were exempted from county caps on Wetland Reserve Easements by the 2014 Farm Bill, and reforestation of these lands is a conservation priority.

**296,126**

Acres of 4W+ lands in the Yazoo Backwater Area.



PREPARED OCTOBER 2019

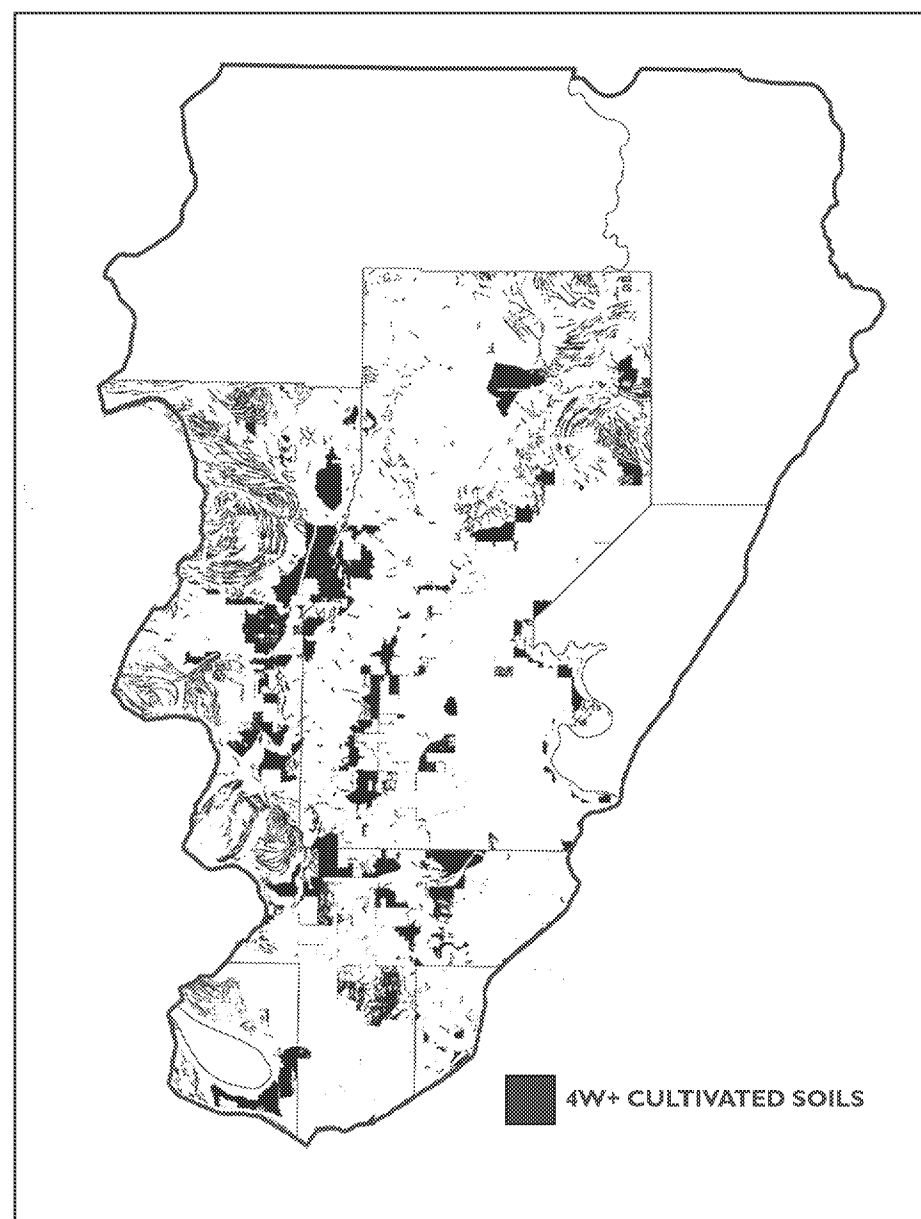


# YAZOO BACKWATER AREA 4W+ CULTIVATED SOILS

COUNTY	CULTIVATED 4W+ SOILS (ACRES)
ISSAQUENA	31,996
SHARKEY	24,516
WARREN	5,530
TOTAL	62,042

The U.S. Department of Agriculture's Land Capability Classification system rates soils based on their degree of limitations for farming. This map depicts lands rated as Classes 4W-8W in the Issaquena, Sharkey and Warren county portions of the Yazoo Backwater Area, the main counties of concern. This group of classes, commonly called "4W+" soils, are the wettest soils and have "severe limitations" on farming, according to the USDA. In general, 4W+ lands are saturated or inundated from 50-100 percent of growing seasons. These lands were exempted from county caps on Wetland Reserve Easements by the 2014 Farm Bill, and reforestation of these lands is a conservation priority. All lands depicted on this map were inundated in 2019. The 62,042 acres depicted here constitute more than half of the farmland that was not planted in crops this year because of flooding. Similar data was not available for other Yazoo Backwater Area counties, which have much less land in the 4W-8W soil classes.

**62,042**  
Acres of cultivated land on soils rated "severely limited" for planting crops because of persistent wetness. These lands are exempt from WRC county caps.



PREPARED OCTOBER 2019



# YAZOO BACKWATER AREA CONSERVATION LANDS

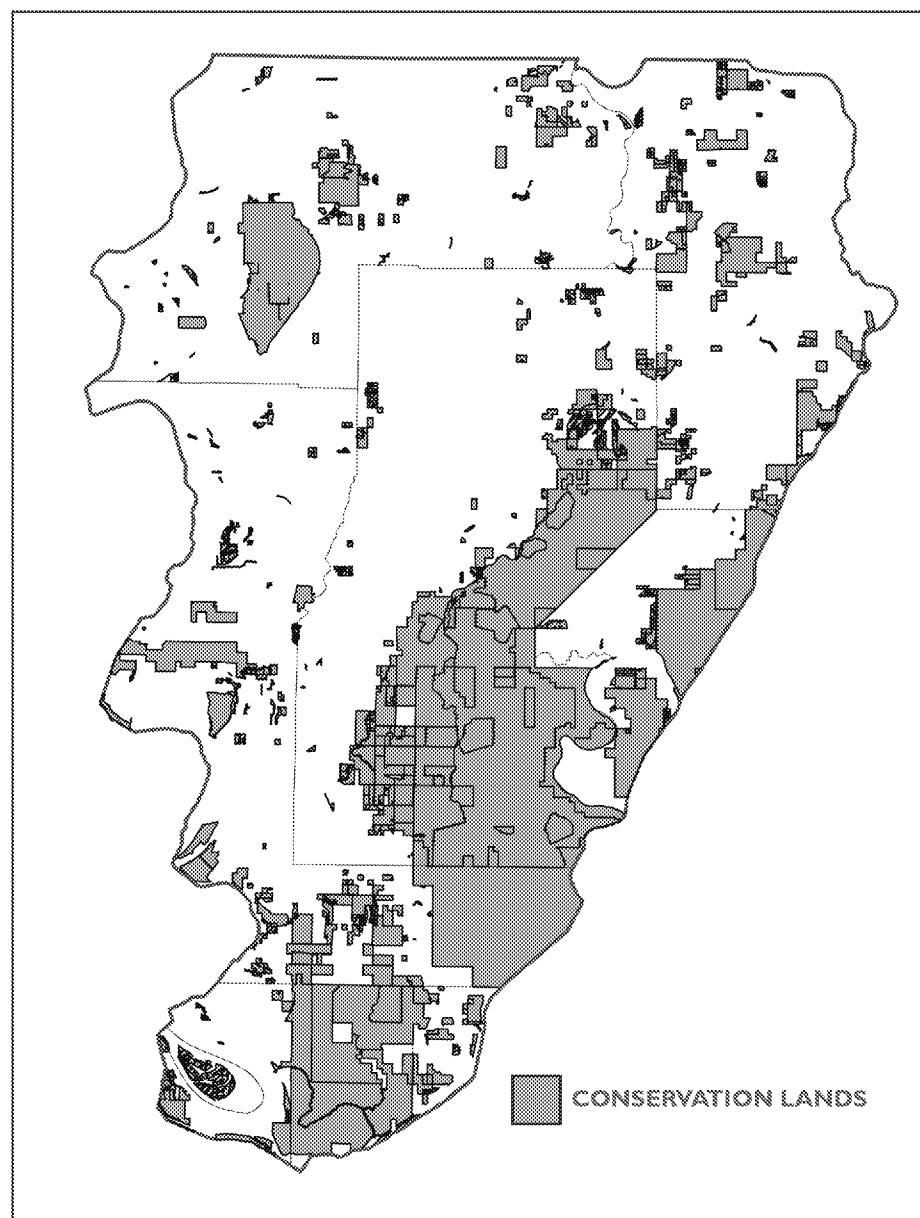
TYPE	2005 REPORTED	2019 ACTUAL
FWS	32,700	38,226
NFS*	20,000	20,000
STATE WMA	90,800	117,900
NRCS EASEMENT	36,800	50,598
NGO EASEMENT	6,969	7,239
CRP	23,500	30,161
TOTAL	210,769	264,124

\*Outside state-managed lands.

Conservation lands in the Yazoo Backwater Area have increased by 53,355 acres from 2005 to 2019, according to publicly available data. The Yazoo Backwater Area covers approximately 926,000 acres. That means conservation lands now cover 28 percent of the Yazoo Backwater Area. Cropland (not including fallow or idle cropland) covered 570,406 acres in the Yazoo Backwater Area in 2018, or 62 percent, according to U.S. Department of Agriculture data.

## 53,355

Acres of new public and private conservation lands established in the Yazoo Backwater Area since 2005.



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Attachment C

Severe Repetitive Loss Properties in the YBWA  
A Resilience Strategy for the Yazoo Backwater Area



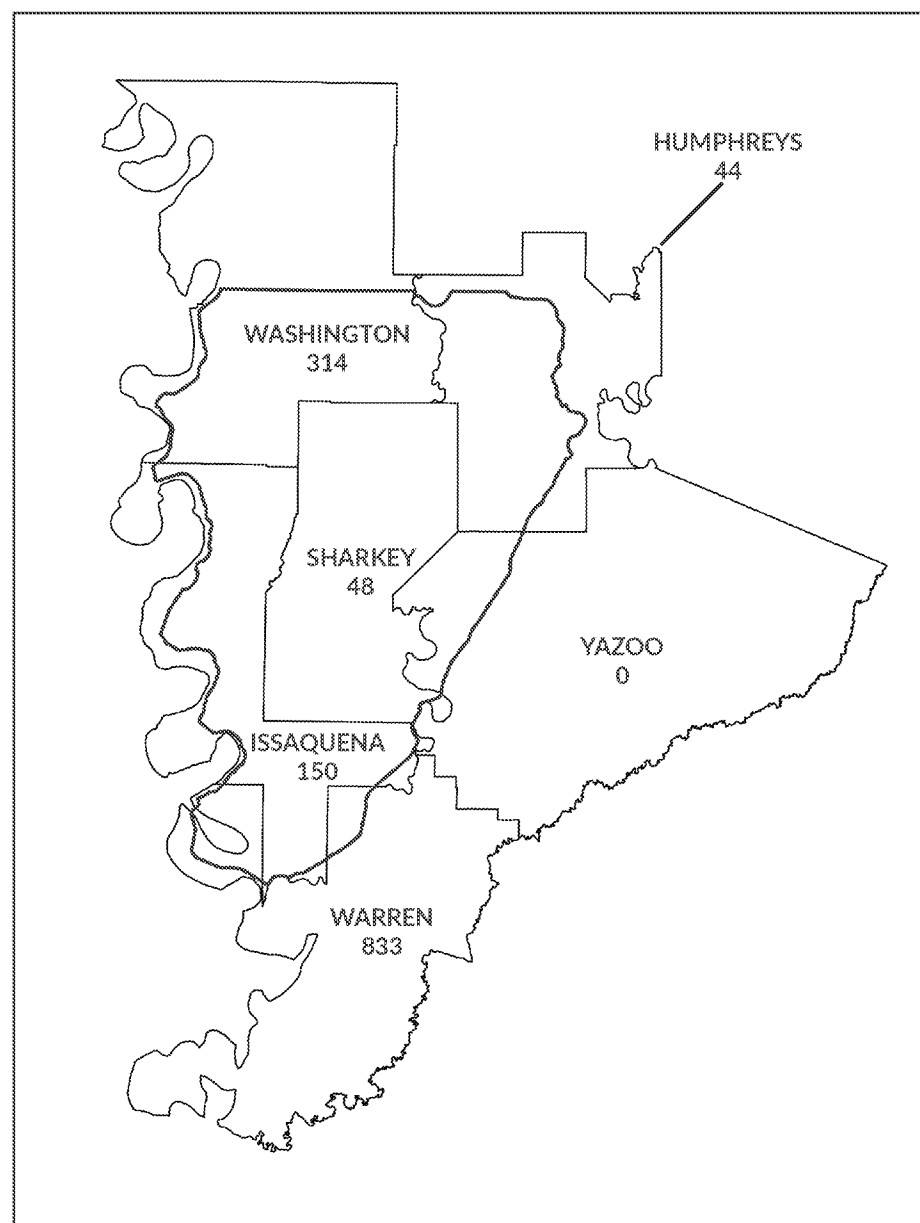
# NFIP SEVERE REPETITIVE LOSS PROPERTIES

COUNTY	SEVERE REPETITIVE LOSS PROPERTIES
HUMPHREYS	44
ISSAQUENA	150
SHARKEY	48
WARREN	833
WASHINGTON	314
YAZOO	0
TOTAL	1,389

The Federal Emergency Management Agency keeps a list of properties covered by the National Flood Insurance Program that have flooded repeatedly. These "severe repetitive loss properties," mostly homes, are considered priorities for elevation or removal. These structures have been the subject of four or more damage claims of more than \$5,000 each or two or more claims in which the insured structure sustained cumulative damage exceeding its fair market value.

**1,389**

Number of structures covered by the National Flood Insurance program, mostly homes, listed in FEMA's Severe Repetitive Loss Properties database.



Source: FEMA Severe Repetitive Loss Properties database, via Houston Chronicle

PREPARED OCTOBER 2019



Message

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**From:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Sent:** 1/23/2020 6:57:12 PM  
**To:** McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]  
**CC:** Tovar, Katlyn [tovar.katlyn@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** DEADLINE: 1/28 - review responses to QFRs from 9/18 Ross hearing  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-23-20.docx

Owen, Jess, and Anna,

Congratulations on the final WOTUS step 2 rule!

Attached is the latest version of Dave's T&I QFRs for your review. I attempted to edit the WOTUS responses based on the now final rule.

Please review and provide any edits by COB Tuesday, Jan. 28.

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 08, 2020 5:21 PM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>  
**Cc:** Tovar, Katlyn <tovar.katlyn@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** RE: review responses to QFRs from 9/18 Ross hearing

Greg,

The current responses to DeFazio – Blending and DeFazio – Pebble are fine. My comments on Yazoo are attached.

Lee

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Wednesday, January 8, 2020 3:45 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Tovar, Katlyn <tovar.katlyn@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,



Consistent with Dave's direction from Monday, I am passing along to you for review an updated set of responses to Dave's Sept T&I hearing QFRs. These have been updated by the offices. I left some redline in to show where OWOW updated items re: 401 and where OGWDW updated the PFAS response based on Jess's comments. Some of the WOTUS ones will need to be updated a bit after the final rule is public. Please let me know if you would like me to give you a hard copy. The final oversight letters are attached as a reference/resource.

Below are the question assignments:

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

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**From:** Spraul, Greg

**Sent:** Tuesday, October 29, 2019 2:17 PM

**To:** McDonough, Owen <[mcdonough.owen@epa.gov](mailto:mcdonough.owen@epa.gov)>; Kramer, Jessica L. <[kramer.jessical@epa.gov](mailto:kramer.jessical@epa.gov)>; Wildeman, Anna <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

**Cc:** Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>

**Subject:** DEADLINE COB Monday 11/4 - review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,

Attached are draft responses to the questions for the record that came in from Dave's September 9/18 hearing before House T&I for your review. The redline in the document are my edits to the program office authored answers. Based on my reading, these answers are consistent with the messaging I've seen in hearing fact sheets, other QFR responses, our oversight letter responses and press releases. Please review and provide edits by COB Monday, November 4. For your reference, I am also attaching the final responses to the 4 DeFazio oversight letters (sans attachments).

Below are the question assignments:

DeFazio WOTUS – Owen (pages 1-5)  
DeFazio DHC – Anna (pages 5-6)  
DeFazio Blending – Lee (pages 6-7)  
DeFazio PFAS – Jess (Page 7)  
DeFazio 401 – Anna/Jess (Pages 7-8)  
DeFazio Yazoo – Lee (Pages 8-9)  
DeFazio Pebble – Lee (Pages 9-10)  
Johnson 1 and 2 – Owen (page 12)  
Johnson 3 401 – Anna/Jess (Page 13)  
Graves 1 – WA WQS – Anna (Page 13)

Greg Spraul

Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water



U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Sent:** 1/23/2020 6:56:24 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Re: Yazoo call cancelled for this afternoon

Thanks, Lee.

\*\*\*\*\*

Brian Frazer, Director  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
US Environmental Protection Agency  
202-566-1652

Sent from my iPhone

On Jan 23, 2020, at 10:46 AM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:



## Appointment

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**From:** Johnson, Belinda [Johnson.Belinda@epa.gov]  
**Sent:** 1/23/2020 5:38:26 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Allenbach, Becky [Allebenach.Becky@epa.gov]; Zapata, Cesar [Zapata.Cesar@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]  
**CC:** Penman, Crystal [Penman.Crystal@epa.gov]  
**Subject:** General Discussion - Yazoo  
**Location:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)  
**Start:** 1/27/2020 4:30:00 PM  
**End:** 1/27/2020 5:00:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Forsgren, Lee; Walker, Mary; Fotouhi, David; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Optional Attendees:** Penman, Crystal



Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 2/26/2020 12:57:54 AM  
**To:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Evaluation of scope of 2008 Yazoo FD  
**Attachments:** Evaluation of the scope of the 2008 FD 2-25-20.docx; ATT00001.htm

DELIBERATIVE

Attached is a draft analysis of the scope of the 2008 Final Determination for Yazoo and associated risk assessment prepared by OGC staff. Happy to discuss once you've had the chance to review. Matt, we have time set aside on Monday for discussions if needed.



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/6/2020 1:30:49 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]

**Subject:** Yazoo policy call

**Location:** Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 11/6/2020 11:00:00 PM

**End:** 11/6/2020 11:30:00 PM

**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; David Fotouhi



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/6/2020 1:14:03 PM  
**To:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Question

Russ,

After this call can you call me on Yazoo. I am having trouble understanding **Ex. 5 Deliberative Process (DP)**

Lee



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/27/2020 5:40:44 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Re: Revised letter for Yazoo

Mary,

Have we seen the updates draft?

Lee

Sent from my iPhone

On Nov 25, 2020, at 11:35 AM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee and David,

Attached is some draft language Leif has suggested to address Ex. 5 AC/DP – Sending for your input.

Thank you for your help on this,  
Mary

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Wednesday, November 25, 2020 11:07 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>  
**Subject:** FW: Revised letter for Yazoo

Hi Mary – here is the revised cover letter. We just sent this to OGC staff to review a few moments ago so I have to caveat that David Fotouhi has not weighed in. We took Lee's revised letter and dropped in the changes to the Ex. 5 AC/DP that you and I just discussed. I'll have very limited availability this afternoon and Friday so please cc Michael, Matt and Mita on any changes or questions that you have so we can respond quickly.

---

**From:** Creswell, Michael <Creswell.Michael@epa.gov>  
**Sent:** Wednesday, November 25, 2020 10:52 AM  
**To:** Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Revised letter for Yazoo



Heidi,

Attached is the revised draft letter with the regional administrator's proposed changes.

Michael W. Creswell, Attorney-Adviser  
U.S. Environmental Protection Agency, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Ph: (404) 562-9556

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<Yazoo DSEIS Comment Letter Pre-Draft (11.25.2020) - revised for principals review.docx>



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/15/2020 9:07:58 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Goodin, John [Goodin.John@epa.gov]  
**BCC:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Yazoo Final EIS kick off

Brian and Russ,

Since the COE has now sent the final Draft EIS to R4 we need to prepare to respond to comments. In order to keep the drafting from becoming too voluminous we are going to keep a small team with the pens on the comments. For OW Headquarters I would ask that Russ do the drafting with Brain and John doing the review. A similarly small team will be selected from Region 4, OGC, and OP.

There will be a kick off meeting probably next week.

If you have any questions please call me.

Lee



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/17/2020 9:16:15 PM  
**To:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Subject:** Call me

Cindy,

When you get a minute can you call me on Yazoo process? My cell number is: Ex. 6 Personal Privacy (PP)

Lee



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/5/2020 2:46:01 PM  
**To:** Goodin, John [Goodin.John@epa.gov]  
**CC:** Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Santell, Stephanie [Santell.Stephanie@epa.gov]  
**BCC:** Mejias, Melissa [mejias.melissa@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**Subject:** RE: 404 question

John,

I am happy to speak with Andrea and other OMB staff about EPA's role in the Yazoo pumps project process but, given recent discussions at the policy level, I would strongly encourage them to include the PAD in those discussions.

Regards,  
Lee

**D. Lee Forsgren**

Deputy Assistant Administrator  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania, Avenue NW  
Room 3219B WJC East Building  
Washington, DC 20460  
202-564-5700

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Monday, October 5, 2020 10:40 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>  
**Subject:** FW: 404 question

Morning, Lee—thinking you may be the more appropriate person to connect with Andrea on this one. Let me know if I should point her to Mel to line something up or you'll just connect directly.

Thanks,  
John

---

**From:** Grossman, Andrea L. EOP/OMB { Ex. 6 Personal Privacy (EOP) (PP) }  
**Sent:** Monday, October 05, 2020 9:29 AM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Cc:** Hickey, Mike J. EOP/OMB { Ex. 6 Personal Privacy (EOP) (PP) }  
**Subject:** 404 question

John,

Do you have any availability for a quick call today? My OMB colleagues who cover Army Corps are working on briefing updates related to Yazoo Pumps and I want to make sure we understand the latest from EPA on it as well.



Thanks,

Andrea Grossman  
Program Examiner  
OMB Environment Branch



Message

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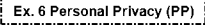
**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 9:24:46 PM  
**To:** Risley, David [Risley.David@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Great! Thanks!

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 4:20 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

OK, I'll double check that R4 is coordinating with them.

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell 

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Tuesday, December 01, 2020 4:15 PM  
**To:** Risley, David <Risley.David@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I am fine with this so long as we are coordinated with the COE on our message.

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:56 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee,  
This updated version from R4 includes your comments and additional edits that resulted from Mary's feedback and OGC. Do you have further comments on this version?

Best,  
David

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell 

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 01, 2020 3:49 PM



**To:** Risley, David <Risley.David@epa.gov>  
**Cc:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

This language was supplied by Region 4. Please let Brandi and Leif know directly if there are issues with this approach, thanks!

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 *office*  

Ex. 6 Personal Privacy (PP)

*cell*

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:44 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Hi Ariadne -- per your request below I've revised the desk statement as David suggested and added a statement about 

Ex. 5 AC/DP

 Language that I've added (or reorganized) is in red.

Ex. 5 AC/DP

If we get a FOIA request for comments please refer the requestor to FOIA on-line; I'll ensure that our FOIA office is aware of the letter and if we get a request I'll ask them to let me know so that there will not be any surprises.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542  

Ex. 6 Personal Privacy (PP)

 (cell)



This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:20 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Can someone familiar with the matter edit the language from OW and Region 4 to address David's concerns?

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 *office*  

Ex. 6 Personal Privacy (PP)

*cell*

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:15 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Re: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I'd prefer a more streamlined approach. I don't see the benefit of 

Ex. 5 AC/DP

Ex. 5 AC/DP

 I agree 

Ex. 5 AC/DP

Sent from my iPhone

On Dec 1, 2020, at 3:13 PM, Goerke, Ariadne <Goerke.Ariadne@epa.gov> wrote:

Here are some comments from OW. Any comments from OGC should be directed to Brandi Jenkins in Region 4.

**Proposed Response:**

**Ex. 5 AC/DP**



# Ex. 5 AC/DP

**Ariadne Goerke**

Acting Associate Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

202-564-5471 *office*

Ex. 6 Personal Privacy (PP) *cell*

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>

**Sent:** Tuesday, December 1, 2020 2:49 PM

**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC WLO MGMT  
<OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer,  
Leif <Palmer.Leif@epa.gov>

**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

David should weigh in, but query whether

Ex. 5 AC/DP

Ex. 5 AC/DP

so is a

judgment call. Another option

Ex. 5 AC/DP

Ex. 5 AC/DP

Adding my staff and Leif Palmer from ORC for awareness.

Steven Neugeboren

Associate General Counsel for Water

United States Environmental Protection Agency

Mailcode 2355A

1200 Penn. Ave., N.W.

Washington DC 20460

(202) 564-5488

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>

**Sent:** Tuesday, December 1, 2020 2:43 PM

**To:** OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>

**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Please let me know if WLO has issues or comments on the response below regarding this inquiry about the Yazoo pump final EIS (or if there is another law office that had an interest). Thanks.

**Ariadne Goerke**

Acting Associate Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

202-564-5471 *office*

Ex. 6 Personal Privacy (PP) *cell*

---

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>

**Sent:** Tuesday, December 1, 2020 2:37 PM

**To:** regionalpress <regionalpress@epa.gov>



**Cc:** Risley, David <[Risley.David@epa.gov](mailto:Risley.David@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>; Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>; Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

## Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Sent:** Tuesday, December 1, 2020 11:34 AM

**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>

**Sent:** Tuesday, December 1, 2020 11:27 AM

**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**

Water Reporter

[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (c)

202-446-0468 (p)

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**Environment & Energy Publishing, LLC**

122 C Street, NW, Suite 722, Washington, DC 20001



EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 9:15:15 PM  
**To:** Risley, David [Risley.David@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I am fine with this so long as we are coordinated with the COE on our message.

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:56 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee,  
This updated version from R4 includes your comments and additional edits that resulted from Mary's feedback and OGC. Do you have further comments on this version?

Best,  
David

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell Ex. 6 Personal Privacy (PP)

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 01, 2020 3:49 PM  
**To:** Risley, David <Risley.David@epa.gov>  
**Cc:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

This language was supplied by Region 4. Please let Brandi and Leif know directly if there are issues with this approach, thanks!

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 office  
Ex. 6 Personal Privacy (PP) ell

---

**From:** Palmer, Leif <Palmer.Leif@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:44 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>;



Blevins, John <Blevins.John@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>

**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Hi Ariadne -- per your request below I've revised the desk statement as David suggested and added a statement about: Ex. 5 AC/DP Language that I've added (or reorganized) is in red.

**Ex. 5 AC/DP**

If we get a FOIA request for comments please refer the requestor to FOIA on-line; I'll ensure that our FOIA office is aware of the letter and if we get a request I'll ask them to let me know so that there will not be any surprises.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542

Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

---

**From:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:20 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Can someone familiar with the matter edit the language from OW and Region 4 to address David's concerns?

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency

ED\_005402\_00010917-00002



**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 3:15 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** Re: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

I'd prefer a more streamlined approach. I don't see the benefit of Ex. 5 AC/DP  
Ex. 5 AC/DP I agree Ex. 5 AC/DP

Sent from my iPhone

On Dec 1, 2020, at 3:13 PM, Goerke, Ariadne <Goerke.Ariadne@epa.gov> wrote:

Here are some comments from OW. Any comments from OGC should be directed to Brandi Jenkins in Region 4.

**Proposed Response:**

**Ex. 5 AC/DP**

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 office  
Ex. 6 Personal Privacy (PP) cell

**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:49 PM  
**To:** Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC WLO MGMT <OGC\_WLO\_MGMT@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline



David should weigh in, but query whether Ex. 5 AC/DP  
Ex. 5 AC/DP so is a  
judgment call. Another option Ex. 5 AC/DP  
Ex. 5 AC/DP Adding my staff and Leif Palmer from ORC for awareness.

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488

---

**From:** Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 2:43 PM  
**To:** OGC WLO MGMT <[OGC\\_WLO\\_MGMT@epa.gov](mailto:OGC_WLO_MGMT@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Cc:** Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Please let me know if WLO has issues or comments on the response below regarding this inquiry about the Yazoo pump final EIS (or if there is another law office that had an interest). Thanks.

**Ariadne Goerke**  
Acting Associate Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
202-564-5471 *office*  
Ex. 6 Personal Privacy (PP) *cell*

---

**From:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>  
**Sent:** Tuesday, December 1, 2020 2:37 PM  
**To:** regionalpress <[regionalpress@epa.gov](mailto:regionalpress@epa.gov)>  
**Cc:** Risley, David <[Risley.David@epa.gov](mailto:Risley.David@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>;  
Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>; Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>;  
Goerke, Ariadne <[Goerke.Ariadne@epa.gov](mailto:Goerke.Ariadne@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table,  
Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

## Ex. 5 Deliberative Process (DP)



## Ex. 5 Deliberative Process (DP)

---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Sent:** Tuesday, December 1, 2020 11:34 AM

**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>

**Sent:** Tuesday, December 1, 2020 11:27 AM

**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**

Water Reporter

[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (c)

202-446-0468 (p)

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**Environment & Energy Publishing, LLC**

122 C Street, NW, Suite 722, Washington, DC 20001

EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/13/2020 5:31:32 PM  
**To:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** Yazoo comments

Russ,

How are we doing on the comments for the draft b(1) guidelines section of the Yazoo final EIS? When do you think we might have a draft to look at?

Regards,  
Lee



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 7:48:21 PM  
**To:** Risley, David [Risley.David@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

My comments below.

---

**From:** Risley, David <Risley.David@epa.gov>  
**Sent:** Tuesday, December 1, 2020 2:42 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** FW: REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

Lee, any red flags with this draft Region 4 response on Yazoo?

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell Ex. 6 Personal Privacy (PP)

---

**From:** Jenkins, Brandi <Jenkins.Brandi@epa.gov>  
**Sent:** Tuesday, December 01, 2020 2:37 PM  
**To:** regionalpress <regionalpress@epa.gov>  
**Cc:** Risley, David <Risley.David@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Table, Melba <Table.Melba@epa.gov>  
**Subject:** REGION 4 PRESS: E&E News inquiry - 5pm EST deadline

For approval. Note the 5 pm deadline. I'm adding OW and OGC to this message.

Thanks – Brandi

**Initial Inquiry:**

I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday.

**Proposed Response:**

# Ex. 5 Deliberative Process (DP)



---

**From:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Sent:** Tuesday, December 1, 2020 11:34 AM

**To:** Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Table, Melba <[Table.Melba@epa.gov](mailto:Table.Melba@epa.gov)>

**Subject:** FW: E&E News inquiry - 5pm EST deadline

Please see the inquiry below.

James

---

**From:** Hannah Northey <[hnorthey@eenews.net](mailto:hnorthey@eenews.net)>

**Sent:** Tuesday, December 1, 2020 11:27 AM

**To:** Pinkney, James <[Pinkney.James@epa.gov](mailto:Pinkney.James@epa.gov)>

**Subject:** E&E News inquiry - 5pm EST deadline

Hi James,

I am a reporter with E&E News. I'd like to know if EPA has commented yet on the Army Corps' proposed Yazoo pump final EIS, the comment period for which closed yesterday. I have a 5pm EST deadline today. Thanks!

**Hannah M. Northey**

Water Reporter

[hnorthey@eenews.net](mailto:hnorthey@eenews.net)

Ex. 6 Personal Privacy (PP) (c)

202-446-0468 (p)

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**Environment & Energy Publishing, LLC**

122 C Street, NW, Suite 722, Washington, DC 20001

EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 3:56:45 PM  
**To:** ryan.a.fisher12.civ@mail.mil  
**CC:** stacey.m.jensen.civ@mail.mil; robyn.s.colosimo.civ@mail.mil  
**Subject:** FW: EPA Comments on Yazoo Backwater DSEIS  
**Attachments:** Yazoo DSEIS Cover Letter Final 11.30.20 (002).pdf; Yazoo DSEIS Enclosure.pdf

Ryan,

FYI these were transmitted yesterday to the Vicksburg District.

Regards,  
Lee

**D. Lee Forsgren**

Deputy Assistant Administrator  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania, Avenue NW  
Room 3219B WJC East Building  
Washington, DC 20460  
202-564-5700

---

**From:** Fite, Mark <Fite.Mark@epa.gov>  
**Sent:** Tuesday, December 1, 2020 10:46 AM  
**To:** Blevins, John <Blevins.John@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Ainslie, William <Ainslie.William@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Yesmant, Christopher <Yesmant.Christopher@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Buzzelle, Stanley <Buzzelle.Stanley@epa.gov>; Martin, KarenL <Martin.KarenL@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kajumba, Ntale <Kajumba.Ntale@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Cc:** Walker, Mary <walker.mary@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** FW: EPA Comments on Yazoo Backwater DSEIS

Hello Team,

Region 4 successfully and timely submitted our comment letter on the Yazoo DSEIS to the Corps of Engineers last night (see attached). We could not have done it without you! Thanks to each of you for your collaboration and assistance.

Sincerely,



Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740

---

**From:** Fite, Mark

**Sent:** Monday, November 30, 2020 9:23 PM

**To:** [YazooBackwater@usace.army.mil](mailto:YazooBackwater@usace.army.mil)

**Cc:** Parrish, Kenneth D Jr CIV USARMY CEMVK (US) <[Kent.D.Parrish@usace.army.mil](mailto:Kent.D.Parrish@usace.army.mil)>; Thames, A Sara CIV USARMY CEMVN (USA) <[sara.thames@usace.army.mil](mailto:sara.thames@usace.army.mil)>

**Subject:** EPA Comments on Yazoo Backwater DSEIS

Please find attached EPA's comments on the subject project.

Thank you!

Mark J. Fite  
Director  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303  
[fite.mark@epa.gov](mailto:fite.mark@epa.gov)  
404.562.9740



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 3:49:12 PM  
**To:** Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]  
**Subject:** FW: Conservation Orgs Materials on Yazoo Pumps Draft SEIS  
**Attachments:** Conservation Organization Comments\_Yazoo Pumps DSEIS\_Final\_11-30-20.pdf; Fleenor\_CV.pdf

Team,

Can we make certain that this is included in any public record that EPA has on the issue and transmitted to the Corps of Engineers for their record.

Regards,  
Lee

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Tuesday, December 1, 2020 10:45 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Materials on Yazoo Pumps Draft SEIS

Good Morning, Mr. Forsgren and Ms. Mejias,

I wanted to share with you a package of materials that Audubon and several partners submitted into the public record yesterday regarding the Corps' October 2020 Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Backwater Pumps.

- [11/30/20 Press Release highlighting our main concerns with the DSEIS \(below\)](#)
- Technical comments submitted by Conservation Organizations to the Corps (attached); [Downloadable here with 15 supporting Appendices](#). **EPA may be particularly interested in Appendix E which presents an analysis of the Corps' HEC-RAS 1D Model**; Dr. Fleenor's CV is attached.
- [Comment letter submitted by 114 science professionals to the Corps](#)
- [Comment letter submitted by 123 national, state and local conservation, faith-based, social justice, and recreation organizations to the Corps](#)

These letters call on the Corps to abandon the destructive, ineffective, and long-vetoed Yazoo Pumps proposal and withdraw the deeply flawed DSEIS. Instead, the Corps is urged to advance Immediate-Affordable-Effective flood risk solutions that will protect local communities and restore this ecologically critical region -- including measures outlined in the proposed Resilience Alternative that accompanies the technical comments.

Notably, [over 55,000 concerned Mississippians and Americans from across the country](#) sent emails to the Corps reinforcing this crucial message.

In closing, we strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

I hope this information is helpful to you. Please do not hesitate to reach out with questions or for more details.



Kind regards,

Jill

**FOR IMMEDIATE RELEASE:** November 30, 2020

**CONTACT:**

*American Rivers* - Olivia Dorothy, (217) 390-3658, [odorothy@americanrivers.org](mailto:odorothy@americanrivers.org)

*Audubon Mississippi* - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)

*Healthy Gulf* - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)

*Mississippi River Network* - Kelly McGinnis, (708) 305-3524, [kmcginnis@1mississippi.org](mailto:kmcginnis@1mississippi.org)

*Mississippi Sierra Club* - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)

**55,000+ Citizens, Scientists, and Public Interest Groups Call for Effective Flood Relief  
Solutions for Mississippi Delta on Eve of Yazoo Pumps Deadline**  
*Corps urged to abandon wasteful, destructive Yazoo Pumps*

**JACKSON, Miss.** – Today marks the public comment deadline on the U.S. Army Corps of Engineers' (Corps) Draft Supplemental Environmental Impact Statement (EIS) for a massive drainage project in Mississippi's South Delta commonly known as the Yazoo Pumps.<sup>1</sup> The \$500 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.<sup>2</sup>

"More than 55,000 citizens, scientists, and public interest groups from Mississippi and across the country have delivered a clear and decisive message to the Corps," **said Kelly McGinnis, Executive Director of the Mississippi River Network.** "Mississippi Delta communities deserve real flood solutions, not the irresponsible, ineffective, and long-vetoed Pumps boondoggle."

This broad chorus of opposition was further demonstrated in a pair of letters sent to the Corps from over 110 science professionals and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations representing millions of members and supporters.<sup>3, 4</sup>

"The Corps' unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust," **said Andrew Whitehurst, Water Program Director for Healthy Gulf.** "The Corps is trying to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable."

Although Congress authorized the Yazoo Pumps in 1941 to theoretically provide flood control, in 2007 the Corps admitted that 80 percent of the project's benefits would be for agriculture. The Corps' Draft Supplemental EIS reinforces this finding<sup>5</sup> as well as its analysis during the 2019 Flood that 347,000 acres, or 68 percent, of the backwater area would remain flooded even with the Pumps in place.<sup>6</sup> Corps data obtained by conservation groups in November through a public records request indicate deficiencies exist with the Corps' modeling and suggest the Pumps would be even less effective than Corps' claims to-date.<sup>7</sup>

"Despite all the hype, the Corps' latest study is proof positive that the Pumps are not designed to protect communities from flooding," **said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club.** "Even at full operation the Pumps would leave, at best, 65 percent of flooded lands underwater and it would take weeks to months to drawdown floodwaters on the remaining backwater lands."

"The Corps is proposing the same project using the same problematic methodologies that were decisively rejected by EPA in 2008," **said Jill Mastrototaro, Policy Director for Audubon Mississippi.** "Not only does the draft study still find the Pumps will harm nearly 39,000 acres of wetlands, it blatantly ignores the litany of natural resource concerns raised in the veto as well as Audubon's recent analysis that the Yazoo backwater supports 29 million migrating birds annually. This study is sloppy, incomplete, and scientifically unsound."



“The Corps does not evaluate a single alternative to the vetoed Yazoo Pumps, despite repeated calls to consider flood risk reduction alternatives that could deliver immediate, affordable, and effective relief,” **said Olivia Dorothy, Certified Floodplain Manager and Upper Mississippi River Basin Director for American Rivers.** “The Yazoo Pumps will not protect people from flooding or reduce flood insurance rates. Commonsense natural infrastructure and non-structural approaches are available now to help protect people’s lives, property and livelihoods. These more reliable measures include elevating homes, voluntary buyouts, and paying farmers to restore cropland back to wetlands. The Corps should prioritize these smart solutions for the Yazoo Backwater Area.”

Federally-funded programs that can provide flood relief alternatives to the Yazoo Pumps include the Federal Emergency Management Agency’s National Flood Insurance and Flood Mitigation Assistance Grant Programs, U.S. Department of Housing and Urban Development’s post-disaster programs, and U.S. Department of Agriculture’s voluntary conservation programs.<sup>8</sup>

## Resources:

- 1) [Federal Register Notice publishing the Corps of Engineers’ Draft Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area](#)
- 2) Adjusted for inflation. The Corps’ 2007 Final EIS estimated the Yazoo Pumps would cost \$440 million dollars to construct. The Corps has not provided an updated cost estimate in the 2020 Draft Supplemental EIS.
- 3) [Comment letter submitted to the Corps by 114 science professionals](#)
- 4) [Comment letter submitted to the Corps by 123 national, state and local conservation, faith-based, social justice, and recreation organizations](#)
- 5) [Draft Supplemental EIS, Appendix G \(Engineering\), at 123, Table 2-26](#)

*Table 2-26. Proposed Plan on Total Ponding Area Reductions*

Flood Frequency	Reduction in Stage	Reduction in Area	Reduction in Volume	Days to Lower Flood to 87 Feet	Change in Water Surface per Day
1-Year	0.67	17.4%	14.2%	1.8	0.34
2-Year	1.81	39.7%	35.8%	12.9	0.25
5-Year	2.78	36.1%	45.8%	32.7	0.18
10-Year	3.17	34.7%	45.9%	48.2	0.16
25-Year	3.34	35.1%	45.4%	64.3	0.14
50-Year	3.3	34.0%	43.1%	85.4	0.12
100-Year	3.12	32.0%	40.7%	99.7	0.11

- 6) U.S. Army Corps of Engineers, Mississippi Valley Division. “Yazoo Backwater Area Inundation Map With & Without Pump” [\[Link to map\]](#). 14 March 2019. (Note: BLUE on map shows 347,000 acres of 512,000 acres that were underwater in March 2019 (i.e., 68% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place.)
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- 8) [Alternative Flood Relief Solutions to the Yazoo Pumps](#)



# # #

---

**Jill Mastrototaro**

Policy Director

504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/1/2020 3:47:20 PM  
**To:** Mastrototaro, Jill [Jill.Mastrototaro@audubon.org]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: Conservation Orgs Materials on Yazoo Pumps Draft SEIS

Thanks for the input. We will make certain that it is part of the public record.

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Tuesday, December 1, 2020 10:45 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Materials on Yazoo Pumps Draft SEIS

Good Morning, Mr. Forsgren and Ms. Mejias,

I wanted to share with you a package of materials that Audubon and several partners submitted into the public record yesterday regarding the Corps' October 2020 Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Backwater Pumps.

- [11/30/20 Press Release highlighting our main concerns with the DSEIS \(below\)](#)
- Technical comments submitted by Conservation Organizations to the Corps (attached); [Downloadable here with 15 supporting Appendices](#). **EPA may be particularly interested in Appendix E which presents an analysis of the Corps' HEC-RAS 1D Model**; Dr. Fleenor's CV is attached.
- [Comment letter submitted by 114 science professionals to the Corps](#)
- [Comment letter submitted by 123 national, state and local conservation, faith-based, social justice, and recreation organizations to the Corps](#)

These letters call on the Corps to abandon the destructive, ineffective, and long-vetoed Yazoo Pumps proposal and withdraw the deeply flawed DSEIS. Instead, the Corps is urged to advance Immediate-Affordable-Effective flood risk solutions that will protect local communities and restore this ecologically critical region -- including measures outlined in the proposed Resilience Alternative that accompanies the technical comments.

Notably, [over 55,000 concerned Mississippians and Americans from across the country](#) sent emails to the Corps reinforcing this crucial message.

In closing, we strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

I hope this information is helpful to you. Please do not hesitate to reach out with questions or for more details.

Kind regards,

Jill

**FOR IMMEDIATE RELEASE:** November 30, 2020

**CONTACT:**

*American Rivers* - Olivia Dorothy, (217) 390-3658, [odorothy@americanrivers.org](mailto:odorothy@americanrivers.org)



*Audubon Mississippi* - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)

*Healthy Gulf* - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)

*Mississippi River Network* - Kelly McGinnis, (708) 305-3524, [kmcginnis@1mississippi.org](mailto:kmcginnis@1mississippi.org)

*Mississippi Sierra Club* - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)

## **55,000+ Citizens, Scientists, and Public Interest Groups Call for Effective Flood Relief Solutions for Mississippi Delta on Eve of Yazoo Pumps Deadline**

*Corps urged to abandon wasteful, destructive Yazoo Pumps*

**JACKSON, Miss.** – Today marks the public comment deadline on the U.S. Army Corps of Engineers' (Corps) Draft Supplemental Environmental Impact Statement (EIS) for a massive drainage project in Mississippi's South Delta commonly known as the Yazoo Pumps.<sup>1</sup> The \$500 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.<sup>2</sup>

"More than 55,000 citizens, scientists, and public interest groups from Mississippi and across the country have delivered a clear and decisive message to the Corps," **said Kelly McGinnis, Executive Director of the Mississippi River Network.** "Mississippi Delta communities deserve real flood solutions, not the irresponsible, ineffective, and long-vetoed Pumps boondoggle."

This broad chorus of opposition was further demonstrated in a pair of letters sent to the Corps from over 110 science professionals and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations representing millions of members and supporters.<sup>3, 4</sup>

"The Corps' unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust," **said Andrew Whitehurst, Water Program Director for Healthy Gulf.** "The Corps is trying to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable."

Although Congress authorized the Yazoo Pumps in 1941 to theoretically provide flood control, in 2007 the Corps admitted that 80 percent of the project's benefits would be for agriculture. The Corps' Draft Supplemental EIS reinforces this finding<sup>5</sup> as well as its analysis during the 2019 Flood that 347,000 acres, or 68 percent, of the backwater area would remain flooded even with the Pumps in place.<sup>6</sup> Corps data obtained by conservation groups in November through a public records request indicate deficiencies exist with the Corps' modeling and suggest the Pumps would be even less effective than Corps' claims to-date.<sup>7</sup>

"Despite all the hype, the Corps' latest study is proof positive that the Pumps are not designed to protect communities from flooding," **said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club.** "Even at full operation the Pumps would leave, at best, 65 percent of flooded lands underwater and it would take weeks to months to drawdown floodwaters on the remaining backwater lands."

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"The Corps does not evaluate a single alternative to the vetoed Yazoo Pumps, despite repeated calls to consider flood risk reduction alternatives that could deliver immediate, affordable, and effective relief," **said Olivia Dorothy, Certified Floodplain Manager and Upper Mississippi River Basin Director for American Rivers.** "The Yazoo Pumps will not protect people from flooding or reduce flood insurance rates. Commonsense natural infrastructure and non-structural approaches are available now to help protect people's lives, property and livelihoods. These more reliable measures



include elevating homes, voluntary buyouts, and paying farmers to restore cropland back to wetlands. The Corps should prioritize these smart solutions for the Yazoo Backwater Area.”

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## Resources:

- 1) [Federal Register Notice publishing the Corps of Engineers’ Draft Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area](#)
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*Table 2-26. Proposed Plan on Total Ponding Area Reductions*

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- 6) U.S. Army Corps of Engineers, Mississippi Valley Division. “Yazoo Backwater Area Inundation Map With & Without Pump” [\[Link to map\]](#). 14 March 2019. (Note: BLUE on map shows 347,000 acres of 512,000 acres that were underwater in March 2019 (i.e., 68% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place.)
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- 8) [Alternative Flood Relief Solutions to the Yazoo Pumps](#)

###

---  
Jill Mastrototaro  
Policy Director



504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/16/2020 8:56:12 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: FYI - 2 incoming congressional letters assigned to regions

We absolutely need to review them!

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Friday, October 16, 2020 4:38 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** FYI - 2 incoming congressional letters assigned to regions

Lee and Charlotte,

I wanted to make you aware of these two incoming congressional letters assigned to Region 6 (UIC Class VI) and Region 4 (Yazoo). OW will have the opportunity to review draft responses prior to signature.

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/22/2020 10:34:03 PM  
**To:** R4DRA [R4DRA@epa.gov]  
**Subject:** Accepted: Yazoo Senior Leadership Briefing  
**Location:** Microsoft Teams Meeting  
**Start:** 11/18/2020 1:00:00 PM  
**End:** 11/18/2020 1:30:00 PM  
**Recurrence:** (none)



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/28/2020 9:53:24 PM  
**To:** R4DRA [R4DRA@epa.gov]  
**Subject:** Accepted: Yazoo Bi-Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting  
**Start:** 11/6/2020 1:00:00 PM  
**End:** 11/6/2020 1:45:00 PM  
**Recurrence:** (none)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/30/2020 10:00:02 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** RE: Draft Yazoo comment letter

I am fine with this. The new language on **Ex. 5 AC/DP** is well written and conveys the Office of Water leadership's understanding of **Ex. 5 AC/DP**

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Monday, November 30, 2020 4:52 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** RE: Draft Yazoo comment letter

DELIBERATIVE

Attaching a clean and redline version with OGC/ORC edits and new language **Ex. 5 AC/DP** I've also asked my staff to get this to whomever in the Region has the pen on the master version. Let me know if you have questions or reactions to these edits or need anything else from us. You'll notice that there is one paragraph with factual statements where R4 and the program should confirm you're comfortable and/or make appropriate modifications. Thank you.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Monday, November 30, 2020 12:25 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>  
**Subject:** Draft Yazoo comment letter

Hi Mandy,

Attached is the draft Yazoo comment letter. It is still being worked on, most notably **Ex. 5 Deliberative Process (DP)** I expect to get something on this later today, but wanted to send the current document now so you could review it. I expect most of it will remain as is, with changes in the cover letter and at the opening portion of the appendix based upon input from David/OGC. The comments are due today.

Please let me know if you have questions/concerns.

Mary



Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/17/2020 6:41:43 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Thanks Brian.

---

**From:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Sent:** Wednesday, June 17, 2020 2:41 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Yes, I will take care of it now.

bf

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, June 17, 2020 2:39 PM  
**To:** Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** FW: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Brian,

Can we put these into the system for response.

Lee

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Wednesday, June 17, 2020 2:37 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

Hello Mr. Forsgren and Ms. Mejias,

I hope this email finds you healthy and doing well.

I wanted to share with you a copy of the letter (attached) that Audubon and several partners submitted in response to the U.S. Army Corps of Engineers' Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Yazoo Pumps. Given its large file size, [Appendices B-I are downloadable here](#). Also attached is our press release that highlights our main concerns.

Our organizations strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

Our letter urges the Corps to abandon its misguided efforts to build the destructive, ineffective Yazoo Pumps, and instead initiate a fundamentally new planning process to examine opportunities for providing meaningful, sustainable,



and immediate flood risk reduction benefits to affected communities in the Yazoo Backwater Area while restoring this ecologically critical region - including the measures outlined in the proposed Resilience Alternative detailed in these scoping comments.

We believe the Corps' effort is prohibited by EPA's 2008 Final Determination and that the Yazoo Pumps may not be - and should not be - constructed. Furthermore, the Corps' refusal to examine other alternatives violates the National Environmental Policy Act, several Water Resources Development Act provisions, the Clean Water Act, and the Endangered Species Act.

Over 100 national, state and local conservation and public interest organizations representing millions of members and supporters delivered a letter to the Corps reinforcing this urgent message. [\[View this letter here.\]](#)

Thirty-eight thousand concerned Mississippians and Americans from across the country accompanied this broad chorus by sending electronic letters to the Corps.

I hope this information is helpful to you. Please do not hesitate to reach out for more details or with questions.

Kind regards,

Jill Mastrototaro

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**Jill Mastrototaro**

Policy Director

504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 8/3/2020 2:59:55 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]

**Subject:** Accepted: Yazoo Discussion

**Location:** Teleconference [Ex. 6 Personal Privacy (PP)] Code [Ex. 6 Personal Privacy (PP)]

**Start:** 8/3/2020 5:00:00 PM

**End:** 8/3/2020 5:30:00 PM

**Recurrence:** (none)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/17/2020 6:39:29 PM  
**To:** Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** FW: Conservation Orgs Letter on Yazoo Pumps Scoping SEIS  
**Attachments:** Conservation Organizations\_Yazoo Pumps Scoping Comments(w Resilience Alt)\_Final\_6-15-20.pdf; Press Release\_Conservation Groups\_Yazoo SEIS\_6-16-20.pdf

Brian,

Can we put these into the system for response.

Lee

---

**From:** Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
**Sent:** Wednesday, June 17, 2020 2:37 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Conservation Orgs Letter on Yazoo Pumps Scoping SEIS

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Kind regards,



Jill Mastrototaro

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**Jill Mastrototaro**

Policy Director

504.481.3659

**Audubon Mississippi**

PO Box 2026

Ridgeland, MS 39158

<http://ms.audubon.org/>



Message

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**Sent:** 8/3/2020 1:01:38 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Yazoo

Works for me!

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Monday, August 3, 2020 8:48 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Yazoo

In that window, I could do 1:00-1:30.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Monday, August 3, 2020 8:34 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: Yazoo

Sure. I am open from Noon till Senior Staff at 2:00 pm.

---

**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Monday, August 3, 2020 8:10 AM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Yazoo

Hi David and Lee,

Would you have a few minutes for me to discuss Yazoo with you? If you're open, I'll ask Belinda to work a brief call for the three of us – certainly not more than 15-20 minutes.

Thanks  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357







Message

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 12/5/2020 10:42:21 PM  
**To:** Ross, David P [ross.davidp@epa.gov]  
**CC:** Aguirre, Janita [Aguirre.Janita@epa.gov]  
**Subject:** Re: Conservation Orgs Materials on Yazoo Pumps Draft SEIS

Will do.

Sent from my iPhone

> On Dec 5, 2020, at 1:13 PM, Ross, David P <ross.davidp@epa.gov> wrote:  
>  
> Pls handle.  
>  
> From: Mastrototaro, Jill <Jill.Mastrototaro@audubon.org>  
> Sent: Tuesday, December 1, 2020 11:30 AM  
> To: Ross, David P <ross.davidp@epa.gov>  
> Subject: Conservation Orgs Materials on Yazoo Pumps Draft SEIS  
>  
> Good Morning, Mr. Ross,  
>  
> I wanted to share with you a package of materials that Audubon and several partners submitted into the public record yesterday regarding the Corps' October 2020 Draft Supplemental Environmental Impact Statement (DSEIS) on the Yazoo Backwater Pumps.  
>  
>  
> \* 11/30/20 Press Release highlighting our main concerns with the DSEIS<<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fms.audubon.org%2Fpress-release%2F55000-citizens-scientists-and-public-interest-groups-call-effective-flood-relief&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181446232%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=d3b0cNGyj5020I4%2FYhRS7AViygQyj2pmj1c885NER%2FA%3D&reserved=0>> (below)  
>  
>  
> \* Technical comments submitted by Conservation Organizations to the Corps (attached); Downloadable here with 15 supporting Appendices<<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Famerican-rivers.sharefile.com%2Fd-s2a5a0c1a53a8466fb27084728799d734&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181456205%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=za0T4rcTG7LGrj30Np0x0jx05B%2B5RvYDq1HsNOpoYvw%3D&reserved=0>>. EPA may be particularly interested in Appendix E which presents an analysis of the Corps' HEC-RAS 1D Model; Dr. Fleenor's CV is attached.  
> \* Comment letter submitted by 114 science professionals to the Corps <[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2Fletter-from-114-Scientists\\_Yazoo-Pumps-DSEIS\\_Nov-30-2020.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181456205%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=zcd8UJS0obckDSNppa0DluhF3rYyPi6SvF7gnkh3F6A%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2Fletter-from-114-Scientists_Yazoo-Pumps-DSEIS_Nov-30-2020.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181456205%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=zcd8UJS0obckDSNppa0DluhF3rYyPi6SvF7gnkh3F6A%3D&reserved=0)>  
> \* Comment letter submitted by 123 national, state and local conservation, faith-based, social justice, and recreation organizations to the Corps <[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FFinal-MRN-letter-from-123-groups\\_Yazoo-Pumps-DSEIS\\_Nov-30-2020\\_with-alternatives.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181466158%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=5VOS7ottXOZ0wCIHFpzX%2FfgzAJ%2B1NKlF0d8CF83%2BzBI%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FFinal-MRN-letter-from-123-groups_Yazoo-Pumps-DSEIS_Nov-30-2020_with-alternatives.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181466158%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=5VOS7ottXOZ0wCIHFpzX%2FfgzAJ%2B1NKlF0d8CF83%2BzBI%3D&reserved=0)>  
>  
> These letters call on the Corps to abandon the destructive, ineffective, and long-vetoed Yazoo Pumps proposal and withdraw the deeply flawed DSEIS. Instead, the Corps is urged to advance Immediate-Affordable-Effective flood risk solutions that will protect local communities and restore this ecologically critical region -- including measures outlined in the proposed Resilience Alternative that accompanies the technical comments.  
>  
> Notably, over 55,000 concerned Mississippians and Americans from across the country sent emails to the Corps reinforcing this crucial message.  
>



> In closing, we strongly support EPA's long-standing decision to use Clean Water Act 404(c) authority to stop this project and protect tens of thousands of acres of critically important wetlands.

> I hope this information is helpful to you. Please do not hesitate to reach out with questions or for more details.

> Kind regards,

> Jill

>

> FOR IMMEDIATE RELEASE: November 30, 2020

>

> CONTACT:

> American Rivers - Olivia Dorothy, (217) 390-3658, [odorothy@americanrivers.org](mailto:odorothy@americanrivers.org)<<mailto:odorothy@americanrivers.org>>

> Audubon Mississippi - Jill Mastrototaro, (504) 481-3659, [jill.mastrototaro@audubon.org](mailto:jill.mastrototaro@audubon.org)<<mailto:jill.mastrototaro@audubon.org>>

> Healthy Gulf - Andrew Whitehurst, (601) 954-7236, [andrew@healthygulf.org](mailto:andrew@healthygulf.org)<<mailto:andrew@healthygulf.org>>

> Mississippi River Network - Kelly McGinnis, (708) 305-3524, [kmcginnis@mississippi.org](mailto:kmcginnis@mississippi.org)<<mailto:kmcginnis@mississippi.org>>

> Mississippi Sierra Club - Louie Miller, (601) 624-3503, [louie.miller@sierraclub.org](mailto:louie.miller@sierraclub.org)<<mailto:louie.miller@sierraclub.org>>

>

> 55,000+ Citizens, Scientists, and Public Interest Groups Call for Effective Flood Relief Solutions for Mississippi Delta on Eve of Yazoo Pumps Deadline

> Corps urged to abandon wasteful, destructive Yazoo Pumps

>

> JACKSON, Miss. – Today marks the public comment deadline on the U.S. Army Corps of Engineers' (Corps) Draft Supplemental Environmental Impact Statement (EIS) for a massive drainage project in Mississippi's South Delta commonly known as the Yazoo Pumps.<sup>1</sup> The \$500 million-dollar Yazoo Pumps are so environmentally destructive that in 2008 the George W. Bush Administration issued a veto through the Clean Water Act to stop the project.<sup>2</sup>

>

> "More than 55,000 citizens, scientists, and public interest groups from Mississippi and across the country have delivered a clear and decisive message to the Corps," said Kelly McGinnis, Executive Director of the Mississippi River Network. "Mississippi Delta communities deserve real flood solutions, not the irresponsible, ineffective, and long-vetoed Pumps boondoggle."

>

> This broad chorus of opposition was further demonstrated in a pair of letters sent to the Corps from over 110 science professionals and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations representing millions of members and supporters.<sup>3, 4</sup>

>

> "The Corps' unprecedented decision to spend more time and taxpayer money on a federally vetoed project defies logic and is an appalling breach of trust," said Andrew Whitehurst, Water Program Director for Healthy Gulf. "The Corps is trying to sidestep federal laws by refusing to consider any other alternatives except an outdated project that they themselves acknowledge will leave most local communities vulnerable."

>

> Although Congress authorized the Yazoo Pumps in 1941 to theoretically provide flood control, in 2007 the Corps admitted that 80 percent of the project's benefits would be for agriculture. The Corps' Draft Supplemental EIS reinforces this finding<sup>5</sup> as well as its analysis during the 2019 Flood that 347,000 acres, or 68 percent, of the backwater area would remain flooded even with the Pumps in place.<sup>6</sup> Corps data obtained by conservation groups in November through a public records request indicate deficiencies exist with the Corps' modeling and suggest the Pumps would be even less effective than Corps' claims to-date.<sup>7</sup>

>

> "Despite all the hype, the Corps' latest study is proof positive that the Pumps are not designed to protect communities from flooding," said Louie Miller, State Director for the Mississippi Chapter of the Sierra Club. "Even at full operation the Pumps would leave, at best, 65 percent of flooded lands underwater and it would take weeks to months to drawdown floodwaters on the remaining backwater lands."

>

> "The Corps is proposing the same project using the same problematic methodologies that were decisively rejected by EPA in 2008," said Jill Mastrototaro, Policy Director for Audubon Mississippi. "Not only does the draft study still find the Pumps will harm nearly 39,000 acres of wetlands, it blatantly ignores the litany of natural resource concerns raised in the veto as well as Audubon's recent analysis that the Yazoo backwater supports 29 million migrating birds annually. This study is sloppy, incomplete, and scientifically unsound."

>

> "The Corps does not evaluate a single alternative to the vetoed Yazoo Pumps, despite repeated calls to consider flood risk reduction alternatives that could deliver immediate, affordable, and effective relief," said Olivia Dorothy, Certified Floodplain Manager and Upper Mississippi River Basin Director for American Rivers. "The Yazoo Pumps will not protect people from flooding or reduce flood insurance rates. Commonsense natural infrastructure and non-structural approaches are available now to help protect people's lives, property and livelihoods. These more reliable measures include elevating homes, voluntary



buyouts, and paying farmers to restore cropland back to wetlands. The Corps should prioritize these smart solutions for the Yazoo Backwater Area."

> Federally-funded programs that can provide flood relief alternatives to the Yazoo Pumps include the Federal Emergency Management Agency's National Flood Insurance and Flood Mitigation Assistance Grant Programs, U.S. Department of Housing and Urban Development's post-disaster programs, and U.S. Department of Agriculture's voluntary conservation programs.8

> Resources:

> 1) Federal Register Notice publishing the Corps of Engineers' Draft Supplemental Environmental Impact Statement for the Yazoo Basin Reformulation Study, Yazoo Backwater Area<<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/details?eisId=310441>>

> 2) Adjusted for inflation. The Corps' 2007 Final EIS estimated the Yazoo Pumps would cost \$440 million dollars to construct. The Corps has not provided an updated cost estimate in the 2020 Draft Supplemental EIS.

> 3) Comment letter submitted to the Corps by 114 science professionals<[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FLetter-from-114-Scientists\\_Yazoo-Pumps-DSEIS\\_Nov-30-2020.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181476114%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBIiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=nqStl%2BGxVbiu1Ylj90RB5WS3F%2FXarZm7KWYmQP7uhg%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FLetter-from-114-Scientists_Yazoo-Pumps-DSEIS_Nov-30-2020.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181476114%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBIiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=nqStl%2BGxVbiu1Ylj90RB5WS3F%2FXarZm7KWYmQP7uhg%3D&reserved=0)>

> 4) Comment letter submitted to the Corps by 123 national, state and local conservation<[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FFinal-MRN-letter-from-123-groups\\_Yazoo-Pumps-DSEIS\\_Nov-30-2020\\_with-alternatives.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181476114%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=hwnJzX5t9y3qZ6RM26lwo0z%2FcsWbUQ7WNNwysIG83GQ%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FFinal-MRN-letter-from-123-groups_Yazoo-Pumps-DSEIS_Nov-30-2020_with-alternatives.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181476114%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=hwnJzX5t9y3qZ6RM26lwo0z%2FcsWbUQ7WNNwysIG83GQ%3D&reserved=0)>, faith-based, social justice, and recreation organizations

> 5) Draft Supplemental EIS, Appendix G (Engineering), at 123, Table 2-26<<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/details?eisId=310441>>

> [cid:image002.png@01D6C753.F4905140]

> 6) U.S. Army Corps of Engineers, Mississippi Valley Division. "Yazoo Backwater Area Inundation Map With & Without Pump" [Link to map]<[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsecureservercdn.net%2F198.71.233.129%2F2zz.ca4.myftpupload.com%2Fwp-content%2Fuploads%2F2019%2F09%2Fmobile\\_map\\_image.jpg&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181486072%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=kBgFiTNxwwB2TiMob9ciiFYobMY3DmVbG0lmna%2F5gtY%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsecureservercdn.net%2F198.71.233.129%2F2zz.ca4.myftpupload.com%2Fwp-content%2Fuploads%2F2019%2F09%2Fmobile_map_image.jpg&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181486072%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=kBgFiTNxwwB2TiMob9ciiFYobMY3DmVbG0lmna%2F5gtY%3D&reserved=0)>. 14 March 2019. (Note: BLUE on map shows 347,000 acres of 512,000 acres that were underwater in March 2019 (i.e., 68% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place.)

> 7) American Rivers. "Yazoo Backwater Area Inundation Map With & Without Pump" [Link to Map]<<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Famerican-rivers.sharefile.com%2Fd-s3acd027cf0a44208818d672d2def39dd&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181486072%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=laJks09d0XcdrFI%2FrlPL0YukaQwX%2Fg2hrrXWFIFYSRI%3D&reserved=0>>. November 30, 2020. (Note: Map was created using shapefiles and data provided by the Corps in November in response to a Freedom of Information Act request from conservation groups. BLUE on map shows 422,195 acres of 509,478 acres that were underwater at the peak of the 2019 Flood (i.e., 83% of the backwater that was flooded) would still continue to flood even with the Yazoo Pumps in place. This result indicates discrepancies in the Corps' modeling that suggest the Pumps may be far less effective than the Corps' claims to-date.)

> 8) Alternative Flood Relief Solutions to the Yazoo Pumps<[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FYazoo-Pumps-Resilience-Alternative\\_Sumbitted-with-Conservation-Organization-Scoping-Comments\\_6-15-20.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181496027%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=OI4TsP4xQbl8Eirr1E1Ybh0%2BWY739KNX6vDMjCGRFu4%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.waterprotectionnetwork.org%2Fwp-content%2Fuploads%2F2020%2F11%2FYazoo-Pumps-Resilience-Alternative_Sumbitted-with-Conservation-Organization-Scoping-Comments_6-15-20.pdf&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637427888181496027%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhawiLCJXVCi6Mn0%3D%7C1000&sdata=OI4TsP4xQbl8Eirr1E1Ybh0%2BWY739KNX6vDMjCGRFu4%3D&reserved=0)>

> # # #

> ---

> Jill Mastrototaro

> Policy Director

> 504.481.3659

>

> Audubon Mississippi



> PO Box 2026  
> Ridgeland, MS 39158  
>  
http://ms.audubon.org/<https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fms.audubon.org%2F  
&data=04%7C01%7CForsgren.Lee%40epa.gov%7Ca6a22181cb1e46fd3ee308d8994979bc%7C88b378b367484867acf976aacbeca  
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awwiLCJXVCi6Mn0%3D%7C1000&sdata=ck3y1ajw9PAkbiHqS9%2FWtHpkzovqf8Sygw1DTV11J1M%3D&reserved=0>  
>



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 8/3/2020 12:34:25 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: Yazoo

Sure. I am open from Noon till Senior Staff at 2:00 pm.

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Monday, August 3, 2020 8:10 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo

Hi David and Lee,

Would you have a few minutes for me to discuss Yazoo with you? If you're open, I'll ask Belinda to work a brief call for the three of us – certainly not more than 15-20 minutes.

Thanks  
Mary

Mary Salmon Walker | Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 5/12/2020 9:25:24 PM  
**To:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Subject:** RE:  
**Attachments:** R4-1 MS Yazoo Pumps Feb 4 2020-dlf.docx

Tony

Here are my comments in redline form. You may need to clean up the formatting.

Lee

---

**From:** Frye, Tony (Robert) <frye.robert@epa.gov>  
**Sent:** Tuesday, May 12, 2020 5:13 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:**

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)



Message

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/28/2020 4:32:00 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: yazoo  
**Attachments:** Yazoo DSEIS Comment Letter Draft (11.27.2020)\_with\_explanation - mjf markup-dlf.docx

Here are my comments. I don't expect to have any more.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Saturday, November 28, 2020 11:10 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: yazoo

FYI, I'm working through the two issues identified by OGC and ORC staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>  
**Date:** November 27, 2020 at 11:28:57 PM EST  
**To:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Cc:** "Nalven, Heidi" <Nalven.Heidi@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>  
**Subject:** Re: yazoo

Thanks David for the quick response. On the first point your suggestion seems like something we could explore. To me it underscores the importance of grappling with the document more thoroughly to ensure that:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

On the second point i would want to engage the team - which of course brings us to Monday's deadline. I know the clients are eager to speak to this in the letter but my advice would be to

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Steven Neugeboren  
Associate General Counsel for Water  
Environmental Protection Agency  
Mails code 2355A  
1200 Pennsylvania Ave, NW  
Washington DC 20460  
202-564-5488

On Nov 27, 2020, at 10:45 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Thank you for this careful assessment. A few follow-up questions and reactions:

- I agree that:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP



# Ex. 5 AC/AWP/DP

- I understand the concern regarding **Ex. 5 AC/AWP/DP**

# Ex. 5 AC/AWP/DP

Please let me know if you have further thoughts on these points.

**David Fotouhi**

Acting General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>

**Sent:** Friday, November 27, 2020 8:50 PM



**To:** Fotouhi, David <Fotouhi.David@epa.gov>

**Cc:** Nalven, Heidi <Nalven.Heidi@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>;

Palmer, Leif <Palmer.Leif@epa.gov>

**Subject:** yazoo

David – we have prepared the attached paper that discusses a couple portions of the DEIS that: Ex. 5 AC/AWP/DP

## **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP So we're sharing that information to help inform your thinking about advising the clients and next steps given Monday's deadline.

We also thought you would want to look at the original source materials referenced in the attached document. It seems like a lot but it's actually a couple of fairly discreet pages that are at issue.

But I thought it might be easiest for you to have this email with the new paper and send you by separate email to follow the documents we reference in it.

Feel free to call me over the weekend to discuss given Monday's deadline. If so best to try my cell at: Ex. 6 Personal Privacy (PP)

Steven Neugeboren  
Associate General Counsel for Water  
United States Environmental Protection Agency  
Mailcode 2355A  
1200 Penn. Ave., N.W.  
Washington DC 20460  
(202) 564-5488



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/12/2020 3:45:43 PM  
**To:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Subject:** Re: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

That is great.

Sent from my iPhone

On Jun 12, 2020, at 11:45 AM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

Cindy can you call me on something else.

Sent from my iPhone

On Jun 12, 2020, at 11:43 AM, Barger, Cindy <Barger.Cindy@epa.gov> wrote:

Hi Lee – I'll let Rob give his independent feedback but OFA-NCD feels that with the assistance/review HQ provided to the R4 team, the attachment is a useful information to USACE scoping effort to stay in line with the scope of the NOI and support development of a quality document understanding the important timeline for this project to identify and implement a flood risk solution quickly for the community.

Hope that is helpful.

Thanks!  
Cindy

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
*Cell: Ex. 6 Personal Privacy (PP)*

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Friday, June 12, 2020 10:36 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE



Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won't speak for OFA, but my quick read of the crisp seven page attachment is that

## Ex. 5 Deliberative Process (DP)

Thanks,  
John

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Friday, June 12, 2020 10:25 AM  
**To:** Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>;  
Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Kaiser, Russell <[Kaiser.Russell@epa.gov](mailto:Kaiser.Russell@epa.gov)>  
**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Can we do an evaluation of the letter with consistency with overall EPA direction.

---

**From:** Kajumba, Ntale <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>  
**Sent:** Friday, June 12, 2020 10:02 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>;  
Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>;  
Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Banister, Beverly <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>; Fite, Mark <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>;  
Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>;  
Wheeler, Kevin <[Wheeler.Kevin@epa.gov](mailto:Wheeler.Kevin@epa.gov)>; Gettle, Jeananne  
<[Gettle.Jeananne@epa.gov](mailto:Gettle.Jeananne@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Goodin, John  
<[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Neugeboren, Steven  
<[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4



61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/12/2020 3:45:07 PM  
**To:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Subject:** Re: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Cindy can you call me on something else.

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On Jun 12, 2020, at 11:43 AM, Barger, Cindy <Barger.Cindy@epa.gov> wrote:

Hi Lee – I’ll let Rob give his independent feedback but OFA-NCD feels that with the assistance/review HQ provided to the R4 team, the attachment is a useful information to USACE scoping effort to stay in line with the scope of the NOI and support development of a quality document understanding the important timeline for this project to identify and implement a flood risk solution quickly for the community.

Hope that is helpful.

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Cindy

*Cindy S. Barger*  
*Director, NEPA Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
Cell Ex. 6 Personal Privacy (PP)

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**Sent:** Friday, June 12, 2020 10:36 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Cc:** Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** RE: EPA Draft Scoping Letter for the Yazoo Area Pumps Project

DELIBERATIVE

Thanks, Lee—folks will give this a fresh read and loop back with further thoughts if any. Won’t speak for OFA, but my quick read of the crisp seven page attachment is that Ex. 5 Deliberative Process (DP)  
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Thanks,  
John



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**To:** Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Kaiser, Russell <[Kaiser.Russell@epa.gov](mailto:Kaiser.Russell@epa.gov)>  
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Can we do an evaluation of the letter with consistency with overall EPA direction.

**From:** Kajumba, Ntale <[Kajumba.Ntale@epa.gov](mailto:Kajumba.Ntale@epa.gov)>  
**Sent:** Friday, June 12, 2020 10:02 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Banister, Beverly <[Banister.Beverly@epa.gov](mailto:Banister.Beverly@epa.gov)>; Fite, Mark <[Fite.Mark@epa.gov](mailto:Fite.Mark@epa.gov)>; Barger, Cindy <[Barger.Cindy@epa.gov](mailto:Barger.Cindy@epa.gov)>; Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>; Wheeler, Kevin <[Wheeler.Kevin@epa.gov](mailto:Wheeler.Kevin@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Frazer, Brian <[Frazer.Brian@epa.gov](mailto:Frazer.Brian@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/23/2020 3:46:10 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Yazoo call cancelled for this afternoon



Message

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 4/10/2020 4:50:36 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Charlotte Bertrand [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Brian and Greg,

Coordinate with OCIR and OCFO and see if we can get away with a phone briefing of the Appropriations Committee.

Lee

---

**From:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Sent:** Friday, April 10, 2020 12:48 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Lee and Greg,

Are you aware of a request that OCFO wants a status update on the steps we have taken to address a request included in the FY 2020 Appropriations Bill and Report language to brief the Appropriations Committee on our coordination with the Corps on the Yazoo Pumps Project by 3 pm today? According to the timeline in the Act, that briefing was to have taken place by 1/19/20.

We were not made aware of the request until this morning.

Thanks,

bf

**From:** Highsmith, Damon <Highsmith.Damon@epa.gov>  
**Sent:** Friday, April 10, 2020 8:56 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>; Redford, David <Redford.David@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Dickens, Sandy <Dickens.Sandy@epa.gov>  
**Subject:** FW: Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Dave,

Could you help with an update to the item below? It's due to RMS today at 3:00. I would appreciate a response cleared through Brian in time for us to respond.

Thanks!  
Damon

#	Report Heading	Office		Due to Congress	Status	Date Completed
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36	Interagency Coordination on Flood Reduction	OWOW	<p>The Committee is concerned by the consequences of frequent and severe flooding within Federal flood control project areas. A major disaster declaration under the Stafford Act was issued for the lower Mississippi River Valley on April 23, 2019, due to months of severe flooding that caused significant damage to infrastructure and the environment. In 2008, the Environmental Protection Agency disapproved of the Corps' recommended plan for remaining unconstructed features after the Corps had completed a complex system of improvements in the area as authorized by Congress. As flooding remains a significant problem in the lower Mississippi River Valley, the Committee understands that EPA is working with the Corps to explore alternatives to provide a balanced approach to the flood damage reduction and environmental needs of the affected area. EPA shall brief the Committee within 30 days of the enactment of this Act on this matter.</p>	Sunday, January 19, 2020		
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**From:** Drummond, Laura <Drummond.Laura@epa.gov>

**Sent:** Thursday, April 09, 2020 9:38 AM

**To:** Cooper, Tiffany <Cooper.Tiffany@epa.gov>; Bissonette, Eric <Bissonette.Eric@epa.gov>; Highsmith, Damon <Highsmith.Damon@epa.gov>; Dickens, Sandy <Dickens.Sandy@epa.gov>; Malloy, Daniel <Malloy.Daniel@epa.gov>; Gilbertson, Sue <gilbertson.sue@epa.gov>

**Cc:** Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Woods, Terry <Woods.Terry@epa.gov>; Danesi, Robin <Danesi.Robin@epa.gov>; Kuntz, Kerry <Kuntz.Kerry@epa.gov>

**Subject:** Congressional Reporting Updates - Due to RMS 3pm Friday April 10

Hello,

OCFO is tracking reporting requirements from the FY 2020 Appropriations Bill and Report language. Please provide updates to the attached document by 3:00pm Friday April 10. If you have any questions, please let us know!

Thanks,

Laura Drummond

Program Analyst

U.S. Environmental Protection Agency

Office of Water – Resource Management Staff



Phone – (202) 564-6561

\*\*\*\*\*

Brian Frazer, Director  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
US Environmental Protection Agency  
202-566-1652



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/8/2020 10:20:42 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]  
**CC:** Tovar, Katlyn [tovar.katlyn@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: review responses to QFRs from 9/18 Ross hearing  
**Attachments:** responses\_qfrs\_sept\_2019\_tandi\_ross\_hrg\_01-08-20.docx

Greg,

The current responses to DeFazio – Blending and DeFazio – Pebble are fine. My comments on Yazoo are attached.

Lee

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Wednesday, January 8, 2020 3:45 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Tovar, Katlyn <tovar.katlyn@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** review responses to QFRs from 9/18 Ross hearing

Owen, Jess, Anna, and Lee,

Consistent with Dave's direction from Monday, I am passing along to you for review an updated set of responses to Dave's Sept T&I hearing QFRs. These have been updated by the offices. I left some redline in to show where OWOW updated items re: 401 and where OGWDW updated the PFAS response based on Jess's comments. Some of the WOTUS ones will need to be updated a bit after the final rule is public. Please let me know if you would like me to give you a hard copy. The final oversight letters are attached as a reference/resource.

Below are the question assignments:

DeFazio WOTUS – Owen  
DeFazio DHC – Anna  
DeFazio Blending – Lee  
DeFazio PFAS – Jess  
DeFazio 401 – Anna/Jess  
DeFazio Yazoo – Lee  
DeFazio Pebble – Lee  
Johnson 1 and 2 – Owen  
Johnson 3 401 – Anna/Jess  
Graves 1 – WA WQS – Anna

---

**From:** Spraul, Greg  
**Sent:** Tuesday, October 29, 2019 2:17 PM  
**To:** McDonough, Owen <mcdonough.owen@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** DEADLINE COB Monday 11/4 - review responses to QFRs from 9/18 Ross hearing



Owen, Jess, Anna, and Lee,

Attached are draft responses to the questions for the record that came in from Dave's September 9/18 hearing before House T&I for your review. The redline in the document are my edits to the program office authored answers. Based on my reading, these answers are consistent with the messaging I've seen in hearing fact sheets, other QFR responses, our oversight letter responses and press releases. Please review and provide edits by COB Monday, November 4. For your reference, I am also attaching the final responses to the 4 DeFazio oversight letters (sans attachments).

Below are the question assignments:

DeFazio WOTUS – Owen (pages 1-5)  
DeFazio DHC – Anna (pages 5-6)  
DeFazio Blending – Lee (pages 6-7)  
DeFazio PFAS – Jess (Page 7)  
DeFazio 401 – Anna/Jess (Pages 7-8)  
DeFazio Yazoo – Lee (Pages 8-9)  
DeFazio Pebble – Lee (Pages 9-10)  
Johnson 1 and 2 – Owen (page 12)  
Johnson 3 401 – Anna/Jess (Page 13)  
Graves 1 – WA WQS – Anna (Page 13)

Greg Spraul  
Senior Advisor for Congressional and Intergovernmental Affairs  
Office of Water  
U.S. Environmental Protection Agency  
Direct: 202-564-0255



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/19/2020 3:32:52 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** My comments  
**Attachments:** Yazoo DSEIS Comment Letter Pre-Draft (11.17.2020) - for principles-dlf.docx

Mary, David, Brittany and Kevin,

Here are my comments on the proposed Yazoo letter. Should we work off of this redline or each send our own to the team?

Lee



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/6/2020 2:29:02 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]

**Subject:** Yazoo policy call

**Location:** Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 11/6/2020 11:00:00 PM

**End:** 11/6/2020 11:30:00 PM

**Show Time As:** Tentative

**Required Attendees:** Walker, Mary; Fotouhi, David; Kevin Wheeler; Brittany Bolen



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/24/2020 2:59:01 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]  
**Subject:** RE: Internal Prep Call on Yazoo (per EPW Minority Pending Request)

Mel – look for a time that works.

---

**From:** Borum, Denis <Borum.Denis@epa.gov>  
**Sent:** Tuesday, March 24, 2020 10:57 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Internal Prep Call on Yazoo (per EPW Minority Pending Request)

Good morning, Lee –

Do either of these times work for you? Today at 2 pm, or Wed (tomorrow) at 1 pm? If not, could you give me a couple times that would for this week? Thank you

Denis

Denis R. Borum  
Congressional Liaison Specialist  
Office of Congressional and Intergovernmental Relations  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (MC-1301A)  
Washington, D.C. 20460  
(202) 564-4836 (phone)  
(202) 501-1549 (fax)  
[borum.denis@epa.gov](mailto:borum.denis@epa.gov) (e-mail)



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 10/27/2020 12:33:12 PM  
**To:** R4DRA [R4DRA@epa.gov]  
**Subject:** Accepted: Yazoo Bi-Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting  
**Start:** 11/5/2020 1:00:00 PM  
**End:** 11/5/2020 1:45:00 PM  
**Recurrence:** (none)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/6/2020 1:45:00 PM  
**To:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** RE: Question

Sure.

---

**From:** Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Sent:** Friday, November 6, 2020 8:44 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>  
**Subject:** RE: Question

Sure, how about if Brian and I call you after.

Russell L. Kaiser  
Chief, Freshwater and Marine Regulatory Branch  
Oceans, Wetlands and Communities Division  
Office of Wetlands, Oceans and Watersheds  
1301 Constitution Ave., N.W.  
Room 7114B West Bldg.  
Washington, DC 20004  
P: 202.566.0963  
C: 

Ex. 5 Personal Privacy (PP)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, November 06, 2020 8:14 AM  
**To:** Kaiser, Russell <Kaiser.Russell@epa.gov>  
**Subject:** Question

Russ,

After this call can you call me on Yazoo. I am having trouble understanding why 

Ex. 5 Deliberative Process (DP)

Lee



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 4/16/2020 2:07:27 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: Corps Yazoo EIS FR notice

Ryan Fischer gave me a heads up on this.

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Thursday, April 16, 2020 10:06 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
**Subject:** FW: Corps Yazoo EIS FR notice

FYI

---

**From:** Klasen, Matthew <Klasen.Matthew@epa.gov>  
**Sent:** Thursday, April 16, 2020 9:39 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>  
**Subject:** Corps Yazoo EIS FR notice

Just saw this (via CQ), published in today's Federal Register.

<https://www.federalregister.gov/documents/2020/04/16/2020-07966/notice-of-intent-to-prepare-supplemental-environmental-impact-statement-for-the-yazoo-area-pump>

-Matt

## SUMMARY:

The U.S. Army Corps of Engineers ("USACE"), Vicksburg District, is announcing its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the Yazoo Basin Reformulation Study, Yazoo Backwater Area, 58 FR 52, 103 (October 6, 1993). Recent floods and new data on the environment in the Yazoo Backwater Area prompted this new project proposal. In 9 out of the last 10 years, the Yazoo Backwater Area has experienced significant flooding. In particular, the historic flood of 2019 caused two deaths, caused hundreds of millions of dollars in damages, flooded over 600 homes, and significantly adversely affected the aquatic and terrestrial environment. The recurring flooding has demonstrated the need to complete the Yazoo Area Pump Project feature. New, previously unavailable data indicates that the environmental impacts to wetlands and other resources from a pumping plant would be far less than calculated in the 2007 FSEIS. The Supplemental Environmental Impact Statement will tier from and update the 2007 FSEIS with new data. It will not



reformulate the broad array of alternatives previously examined in the 2007 FSEIS, but will analyze a new project proposal to build the pump project (the Proposed Action) in light of the new data. The Supplemental Environmental Impact Statement will also examine environmental measures to mitigate the low dissolved oxygen content in the Yazoo Backwater Area, which is currently detrimental to aquatic species.

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Matt Klasen  
U.S. Environmental Protection Agency  
Office of Congressional Affairs  
cell [Ex. 6 Personal Privacy (PP)]



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/12/2020 2:25:00 PM  
**To:** Barger, Cindy [Barger.Cindy@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** FW: EPA Draft Scoping Letter for the Yazoo Area Pumps Project  
**Attachments:** YBA Scoping (Internal Draft )\_11June2020.docx

Can we do an evaluation of the letter with consistency with overall EPA direction.

---

**From:** Kajumba, Ntale <Kajumba.Ntale@epa.gov>  
**Sent:** Friday, June 12, 2020 10:02 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Banister, Beverly <Banister.Beverly@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Barger, Cindy <Barger.Cindy@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Wheeler, Kevin <Wheeler.Kevin@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** EPA Draft Scoping Letter for the Yazoo Area Pumps Project

Hi Everyone,

We have been working on an EPA scoping letter for the Yazoo Area Pumps Project Supplemental Environmental Impact Statement. The project is located in the MS Delta and our letter is drafted in response to the Notice of Intent issued on April 16. The draft scoping letter currently includes input from various levels of staff and management Regional and National related to NEPA, Water, Legal and Environmental Justice. Please note that EPA is a cooperating agency and will continue to work closely with the Corps, Vicksburg District, to help expediate the project and ensure that are privy to our best and brightest people and recommendation early on in this process. The scoping process is intended to assist the lead agency with the scope of their evaluation and provide them with considerations relevant to NEPA and our other statutory and cross-cutting responsibilities. If you have any questions or comments, please share them with us and our internal will work to address them. The letter is due to the Corps on June 15, 2020. Thank you for consideration and assistance as we work to finalize this review process. If I have missed someone, please feel free to share.

Ntale

**Ntale Kajumba**  
NEPA Section, Chief  
Strategic Programs Office  
Office of the Regional Administrator  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9620  
[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 6:13:22 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]

**Subject:** Accepted: General Discussion - Yazoo

**Location:** Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 8 Personal Privacy (PP)

**Start:** 1/23/2020 10:30:00 PM

**End:** 1/23/2020 11:00:00 PM

**Show Time As:** Busy



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 5:50:08 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]  
**Subject:** Re: General Discussion - Yazoo

I agree with David. We need more time to prepare. David and I are also tied up with other higher priorities today.

Sent from my iPhone

On Jan 22, 2020, at 12:43 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Mary, Blake, do you know if this invite is for the briefing we discussed on the phone earlier today? I think we would need to give our staffs more lead time to prepare, but I defer to you if there are no other times available.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Johnson, Belinda <[Johnson.Belinda@epa.gov](mailto:Johnson.Belinda@epa.gov)> **On Behalf Of** R4RA Calendar  
**Sent:** Wednesday, January 22, 2020 12:29 PM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary; Ashbee, Blake; Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar  
**Cc:** Patrick, Monique; Penman, Crystal  
**Subject:** General Discussion - Yazoo  
**When:** Wednesday, January 22, 2020 5:00 PM-5:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)



Message

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 5/8/2020 9:05:30 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: EPA Cooperating Agency Letter (Yazoo)

Mary,

The substance of the letter is absolutely fine.

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

If you or David disagree I don't feel that strongly.

Lee

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Friday, May 8, 2020 4:43 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** Fwd: EPA Cooperating Agency Letter (Yazoo)

*Internal/deliberative*

Lee and David,

This is the draft letter my folks have drafted to agree to being a cooperating agency on the Yazoo SEIS. I'd like your thoughts before I discuss edits with folks. At one point Lee noted that he had some thoughts on

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Do you have time for a call early next week? Lee, I will give a call Monday to touch base.

I hope you both are well. Have a great weekend,  
Mary

Sent from my iPhone

Begin forwarded message:

**From:** "Kajumba, Ntale" <Kajumba.Ntale@epa.gov>  
**Date:** May 8, 2020 at 2:32:23 PM EDT  
**To:** "Walker, Mary" <walker.mary@epa.gov>  
**Cc:** "Hicks, Matt" <Hicks.Matthew@epa.gov>, "Fite, Mark" <Fite.Mark@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>, "Banister, Beverly" <Banister.Beverly@epa.gov>, "Ashbee, Blake" <ashbee.blake@epa.gov>  
**Subject:** EPA Cooperating Agency Letter (Yazoo)

Hi Mary,



Attached is a preliminary response for the EPA Yazoo Cooperating Agency Letter that Matt and I worked on for your initial conversations with HQs. Others will get a chance to review the letter next week including the Office of General Counsel.

Thanks,

Ntale

**Ntale Kajumba**

NEPA Section, Chief

Strategic Programs Office

Office of the Regional Administrator

U.S. EPA, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

(404) 562-9620

[Kajumba.ntale@epa.gov](mailto:Kajumba.ntale@epa.gov)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/15/2020 6:53:21 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]  
**Subject:** Fwd: Yazoo Backwater Meeting Slides and Map (UNCLASSIFIED)  
**Attachments:** MVD EPA Meeting 15 Jan 2020 v1.pdf; ATT00001.htm; Yazoo\_Backwater\_Project\_Features\_01142020.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Johnson, Belinda" <Johnson.Belinda@epa.gov>  
**Date:** January 15, 2020 at 1:46:36 PM EST  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Subject:** FW: Yazoo Backwater Meeting Slides and Map (UNCLASSIFIED)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 5:31:25 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]  
**CC:** Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Yazoo

Call me about the 5:00 pm Yazoo discussion.

Sent from my iPhone



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 5:29:54 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]

**Subject:** Accepted: General Discussion - Yazoo

**Location:** Teleconference - Ex. 6 Personal Privacy (PP) Conference ID: Ex. 6 Personal Privacy (PP)

**Start:** 1/22/2020 10:00:00 PM

**End:** 1/22/2020 10:30:00 PM

**Recurrence:** (none)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 3:54:53 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: Yazoo update

Will open the line at 11:15

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Wednesday, January 22, 2020 10:53 AM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Yazoo update

Yes – I will have an 1130 but at least we can touch base quickly. That would work for me.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, January 22, 2020 10:46 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>  
**Subject:** RE: Yazoo update

I need to talk with Anna on WOTUS at 11. Could we push to 11:15?

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Wednesday, January 22, 2020 8:10 AM  
**To:** Forsgren, Lee; Fotouhi, David; Walker, Mary  
**Subject:** Yazoo update  
**When:** Wednesday, January 22, 2020 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Conference line Ex. 6 Personal Privacy (PP) ID# Ex. 6 Personal Privacy (PP)



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 4/14/2020 9:45:51 PM  
**To:** Risley, David [Risley.David@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]  
**Subject:** RE: Please Uphold EPA's Yazoo Pumps Veto

Thanks.

-----  
From: Risley, David <Risley.David@epa.gov>  
Sent: Tuesday, April 14, 2020 5:42 PM  
To: Forsgren, Lee <Forsgren.Lee@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>  
Subject: FW: Please Uphold EPA's Yazoo Pumps Veto

Primarily FYI -- also a reminder of this annual issue starting to gain steam in 2020.

David Risley  
EPA Office of Water Communications  
Office 202-343-9177  
Cell [Ex. 6 Personal Privacy (PP)]

-----Original Message-----  
From: Hackel, Angela <Hackel.Angela@epa.gov>  
Sent: Tuesday, April 14, 2020 3:15 PM  
To: Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Risley, David <Risley.David@epa.gov>  
Subject: FW: Please Uphold EPA's Yazoo Pumps Veto

FYI.

-----Original Message-----  
From: Chris Watson <watsonce@sbcglobal.net>  
Sent: Tuesday, April 14, 2020 3:12 PM  
To: Press <Press@epa.gov>  
Subject: Please Uphold EPA's Yazoo Pumps Veto

Dear Administrator Wheeler,

I am writing to urge you to uphold Environmental Protection Agency's (EPA) 2008 veto decision that halted the wasteful, environmentally destructive drainage project in the Mississippi Delta known as the Yazoo Backwater Pumps. Instead, I ask that EPA implement more effective flood risk management alternatives to help local communities recover from recent flooding and manage future flood risk.

I am someone who cares deeply about our country's natural resources. I understand that recent analyses by the Army Corps of Engineers determined that under the best-case scenario, 68 percent of the South Delta would continue to flood even with the Pumps in place. This finding supports past conclusions that the project is not designed to protect local communities from flooding; instead, 80 percent of the project benefits would be for agriculture by draining wetlands to intensify farming.

EPA's veto, only the 13th in the history of the Clean Water Act, was supported by tens of thousands of Americans. The George W. Bush administration conducted a rigorous analysis before issuing the veto based on the Pumps' environmental impacts. EPA also raised major concerns about the project's economics and found that less damaging, more affordable alternatives to floodplain management had not been adequately considered. The veto was upheld by a federal judge and affirmed by the 5th Circuit Court of Appeals.

Communities affected by flooding in the Mississippi Delta deserve practical, affordable solutions for managing flood risk and recovery. In 2000, EPA identified several alternative strategies for the Lower Yazoo River Basin that the Corps failed to consider and continues to sit on. These alternatives should be deployed immediately.

Please continue to uphold EPA's veto of the costly, ineffective Yazoo Pumps. Tell the Corps to instead employ the flood risk management alternatives outlined by the EPA in 2000 to provide critical, long-term relief for those affected.

Sincerely

Chris Watson  
8140 Wiebels Drive  
Knoxville, TN  
37931



watsonce@sbcglobal.net



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 1:10:11 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** Yazoo update

**Location:** Conference line Ex. 6 Personal Privacy (PP) ID# Ex. 6 Personal Privacy (PP)

**Start:** 1/22/2020 4:00:00 PM

**End:** 1/22/2020 4:30:00 PM

**Show Time As:** Tentative

**Required** David Fotouhi; Walker, Mary

**Attendees:**



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 1:06:56 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** RE: Yazoo - next steps

Let's do 11:00. I will send a calendar invite.

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, January 22, 2020 7:24 AM  
**To:** Walker, Mary <walker.mary@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Re: Yazoo - next steps

Sure. Could we try for 11? If that doesn't work, I have noon-1 as well.

Sent from my iPhone

On Jan 22, 2020, at 7:12 AM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

I'm available between 8-9:30, at 11, 12-1:30, and at 5:30 or later.

David, do any of these windows work for you?

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Wednesday, January 22, 2020 6:53 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone

On Jan 21, 2020, at 7:29 PM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

Hi Lee and David,



I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.

Thanks,

Mary

<image002.png>

Mary Salmon Walker Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 6/5/2020 1:18:45 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Re: Yazoo NEPA comment timeline

Thanks. Let me check.

Sent from my iPhone

On Jun 5, 2020, at 8:28 AM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee and David,

We have a couple of upcoming deadlines on the Yazoo NEPA comments. Our comments on the modeling are due on 6/12 – so I have asked staff to get these to us for review by 6/10 (Wednesday). Scoping comments are due 6/15, so staff will get these to us by 6/12 (Friday). Staff level coordination among our offices should already have happened by the time we get them.

I wanted to get these dates on your radar – and I'll send up the drafts as soon as I receive them.

I hope you both have a great weekend,  
Mary

<!--[if !vml]-->

<image002.png>

<!--[endif]--> Mary Salmon Walker Regional Administrator



US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 1:05:41 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: Yazoo - next steps

I can do 11 or after 5:30 but it is David's schedule that will probably dictate.

Lee

---

**From:** Walker, Mary <walker.mary@epa.gov>  
**Sent:** Wednesday, January 22, 2020 7:12 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** RE: Yazoo - next steps

I'm available between 8-9:30, at 11, 12-1:30, and at 5:30 or later.

David, do any of these windows work for you?

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Wednesday, January 22, 2020 6:53 AM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Cc:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone

On Jan 21, 2020, at 7:29 PM, Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)> wrote:

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.  
Thanks,



Mary

<image002.png>

Mary Salmon Walker   Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 2/11/2020 12:46:08 AM  
**To:** Jackson, Ryan [jackson.ryan@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]  
**Subject:** Yazoo Briefing paper - for review.  
**Attachments:** R4 MS Yazoo Pumps January 2020 Update-ow LDF (002).docx; ATT00001.htm

Ryan,

Here a briefing paper on where we stand on the Yazoo pump project for your review.

Let me know if you need anything else.

Respectfully,

Lee



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/16/2020 11:44:14 PM  
**To:** Frye, Tony (Robert) [frye.robert@epa.gov]  
**Subject:** Fwd: Yazoo

Per our conversation

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** March 16, 2020 at 6:08:19 PM EDT  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Yazoo

If she comes back into district maybe I can go meet her in her office in Jackson. It's a really long drive but do-able.

-----Original Message-----

From: Forsgren, Lee <Forsgren.Lee@epa.gov>  
Sent: Monday, March 16, 2020 6:00 PM  
To: Ross, David P <ross.davidp@epa.gov>  
Cc: Walker, Mary <walker.mary@epa.gov>  
Subject: Re: Yazoo

Will cover it if OCIR can't get it postponed.

Sent from my iPhone

On Mar 16, 2020, at 5:41 PM, Ross, David P <ross.davidp@epa.gov> wrote:

Both the Administrator and I agree that Mary and team are not to travel to DC for the Y.Pumps congressional meeting. If it can be by phone, it should be. If someone needs to go to the Hill in person, Lee please work to postpone it or please cover it but only as a means of last resort.

Thanks.

Sent from my iPad



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 11:53:27 AM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** Re: Yazoo - next steps

Mary

I think the three of us should talk today if possible. My schedule is flexible except from 2:30-3:30.

I will be busy but can break away to talk.

Lee

Sent from my iPhone

On Jan 21, 2020, at 7:29 PM, Walker, Mary <walker.mary@epa.gov> wrote:

Hi Lee and David,

I wanted to see if we can set a time to talk about Yazoo – notably our commitment to get back to the Corps by end of month on process and timeline. Should I have my assistant try to find a time for a briefing of David on the submittal received, or can the three of us catch up in the next couple of days either before or after hours?

Let me know what's best for you, and we'll work to arrange things on our end.

Thanks,

Mary

<!--[if !vml]-->



<image002.png>

<!--[endif]--> Mary Salmon Walker    Regional Administrator  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
Tel: (404) 562-8357



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 2/10/2020 11:34:34 PM  
**To:** Walker, Mary [walker.mary@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Re: Yazoo Briefing paper - for review.

We will make those changes and send it to RJ first thing in the morning.

Sent from my iPhone

On Feb 10, 2020, at 5:47 PM, Walker, Mary <walker.mary@epa.gov> wrote:

My only comment would be **Ex. 5 Deliberative Process (DP)** **Ex. 5 Deliberative Process (DP)**  
**Ex. 5 Deliberative Process (DP)** ??

Thanks,  
Mary

Sent from my iPhone

On Feb 10, 2020, at 4:53 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

DELIBERATIVE

With my edits tracked in the attached for your consideration.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Sent:** Monday, February 10, 2020 3:19 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Yazoo Briefing paper - for review.

Draft/Deliberative/Confidential

Dear All,

Per Lee's request, please find attached a Yazoo briefing paper for your review. Please provide edits and comments.



Thanks!,  
Mel

Best Regards,  
Melissa Mejias, Confidential Assistant  
Office of Water, Office of the Assistant Administrator  
U.S. Environmental Protection Agency  
Room 3226B WJC East  
Phone: (202) 564-6512  
Mobile: Ex. 6 Personal Privacy (PP)  
Email: [mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)

<R4 MS Yazoo Pumps January 2020 Update-ow LDF.docx>



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 4/8/2020 1:32:48 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Yes please

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Wednesday, April 8, 2020 9:24 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Do I need to ask Denis to move this? It looks like 3pm would work.

-----  
**Subject:** Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below

**Start:** Wed 4/8/2020 11:30 AM  
**End:** Wed 4/8/2020 12:00 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Borum, Denis  
**Required Attendees:** Forsgren, Lee; Voyles, Travis; Marraccini, Davina; Palmer, Leif; Gettle, Jeaneanne; Ashbee, Blake; Calli, Rosemary; McGill, Thomas; Ghosh, Mita; Hicks, Matt; Frye, Tony (Robert); Knapp, Kristien  
**Optional Attendees:** Spraul, Greg; Wise, Allison; Jenkins, Brandi; Edwards, John (Holt); Willey, Katharine; Brazauskas, Joseph; Goodin, John; Frazer, Brian

Senate EPW Committee minority staff have requested a briefing on Yazoo.

Call-in number: Ex. 6 Personal Privacy (PP)

Conference ID: Ex. 6 Personal Privacy (PP)



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/26/2020 4:08:46 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]  
**Subject:** Accepted: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below  
**Start:** 4/8/2020 3:30:00 PM  
**End:** 4/8/2020 4:00:00 PM  
**Show Time As:** Busy



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/26/2020 4:06:21 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

The Water Leadership retreat isn't going to happen so I can do 10-12.

---

**From:** Borum, Denis <Borum.Denis@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:04 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Your calendar is booked solid for April 8<sup>th</sup>. Is there time that actually works?

---

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:03 PM  
**To:** Borum, Denis <Borum.Denis@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Works for me.

---

**From:** Borum, Denis <Borum.Denis@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:02 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

I will look. I'll need to coordinate with approx. 12 other schedules, so the prep could end up even weeks further out.

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 11:52 AM  
**To:** Borum, Denis  
**Subject:** Tentative: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**When:** Wednesday, April 1, 2020 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** See Call-in number, below

How about like April 8<sup>th</sup>?



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/26/2020 4:02:41 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

Works for me.

---

**From:** Borum, Denis <Borum.Denis@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:02 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps

I will look. I'll need to coordinate with approx. 12 other schedules, so the prep could end up even weeks further out.

-----Original Appointment-----

**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Thursday, March 26, 2020 11:52 AM  
**To:** Borum, Denis  
**Subject:** Tentative: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**When:** Wednesday, April 1, 2020 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** See Call-in number, below

How about like April 8<sup>th</sup>?



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 3/26/2020 3:51:48 PM  
**To:** Borum, Denis [Borum.Denis@epa.gov]  
**Subject:** Tentative: Internal Prep Call Re: Senate EPW Request on Yazoo Pumps  
**Location:** See Call-in number, below  
**Start:** 4/1/2020 8:00:00 PM  
**End:** 4/1/2020 8:30:00 PM  
**Show Time As:** Busy

How about like April 8<sup>th</sup>?



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/10/2020 4:19:53 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Subject:** RE: Updated citizen response re. Yazoo

It is fine.

---

**From:** Spraul, Greg <Spraul.Greg@epa.gov>  
**Sent:** Friday, January 10, 2020 11:19 AM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** FW: Updated citizen response re. Yazoo

Lee - this seems fine. Let me know if you concur.

---

**From:** Marraccini, Davina <Marraccini.Davina@epa.gov>  
**Sent:** Friday, January 10, 2020 11:09 AM  
**To:** Spraul, Greg <Spraul.Greg@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Wise, Allison <Wise.Allison@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Hudson, Wanda <Hudson.Wanda@epa.gov>  
**Subject:** RE: Updated citizen response re. Yazoo

All,

R4 made a few minor tweaks to the middle paragraph. See highlighted edits below and let me know ASAP of any show stoppers as we plan to route this for signature today. Thank you!

## Ex. 5 Deliberative Process (DP)

*Davina Marraccini*

Government Liaison

U.S. Environmental Protection Agency - Region 4

404-562-8293 (office)

Ex. 6 Personal Privacy (PP) (cell)

[marraccini.davina@epa.gov](mailto:marraccini.davina@epa.gov)



---

**From:** Marraccini, Davina  
**Sent:** Thursday, January 9, 2020 2:45 PM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; Borum, Denis <[Borum.Denis@epa.gov](mailto:Borum.Denis@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Hudson, Wanda <[Hudson.Wanda@epa.gov](mailto:Hudson.Wanda@epa.gov)>  
**Subject:** RE: Updated citizen response re. Yazoo

Thank you, Greg.

---

**From:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>  
**Sent:** Thursday, January 9, 2020 12:46 PM  
**To:** Marraccini, Davina <[Marraccini.Davina@epa.gov](mailto:Marraccini.Davina@epa.gov)>; Borum, Denis <[Borum.Denis@epa.gov](mailto:Borum.Denis@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Hudson, Wanda <[Hudson.Wanda@epa.gov](mailto:Hudson.Wanda@epa.gov)>  
**Subject:** RE: Updated citizen response re. Yazoo

I showed this draft to Lee and he is fine with it.

---

**From:** Marraccini, Davina <[Marraccini.Davina@epa.gov](mailto:Marraccini.Davina@epa.gov)>  
**Sent:** Wednesday, January 08, 2020 3:53 PM  
**To:** Spraul, Greg <[Spraul.Greg@epa.gov](mailto:Spraul.Greg@epa.gov)>; Borum, Denis <[Borum.Denis@epa.gov](mailto:Borum.Denis@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Wise, Allison <[Wise.Allison@epa.gov](mailto:Wise.Allison@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Hudson, Wanda <[Hudson.Wanda@epa.gov](mailto:Hudson.Wanda@epa.gov)>  
**Subject:** FW: Updated citizen response re. Yazoo

Good afternoon,

We continue to receive citizen correspondence re. Yazoo, with 2 responses due on 1/10. I've attached one of the incoming letters together with an updated draft response (new language in yellow). Please let me know as soon as possible whether you'd like any changes made.

Thank you, and I hope everyone is having a good start to the year.

*Davina Marraccini*

Government Liaison  
U.S. Environmental Protection Agency - Region 4  
404-562-8293 (office)  

Ex. 6 Personal Privacy (PP)

 cell)  
[marraccini.davina@epa.gov](mailto:marraccini.davina@epa.gov)



Message

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/27/2020 4:15:50 PM  
**To:** Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**Subject:** Yazoo call

Brian and Russ,

Are you coming over to my office for the Yazoo call or doing it from your offices?

Lee



## Appointment

---

**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/31/2020 8:59:38 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]

**Subject:** Accepted: General Discussion - Yazoo

**Location:** Teleconference Ex. 6 Personal Privacy (PP) Code Ex. 6 Personal Privacy (PP)

**Start:** 2/3/2020 8:30:00 PM

**End:** 2/3/2020 9:00:00 PM

**Show Time As:** Busy



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 2/26/2020 6:13:07 PM  
**To:** Andy Gipson [Andy@mdac.ms.gov]  
**CC:** Chris McDonald [Chris@mdac.ms.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**BCC:** Carter, Brittany S. [carter.brittany@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]  
**Subject:** RE: Yazoo Pumps

Commissioner,

We at the Office of Water appreciate your feedback on the new Navigable Waters Protection Rule (aka new WOTUS rules) in general and Dr. Owen McDonough's comments on them in particular.

EPA is working aggressively with the Army Corps of Engineers to find a timely solution to the flooding issues in the Yazoo Backwater region. We would hope to have a more thorough articulation of possible paths forward in the near future.

Thank you for weighing in on this important issue and we look forward to working with you going forward.

Regards,  
Lee

D. Lee Forsgren  
Deputy Assistant Administrator  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania, Avenue NW  
Room 3219B WJC East Building  
Washington, DC 20460  
202-564-5700

-----Original Message-----

From: Andy Gipson <Andy@mdac.ms.gov>  
Sent: Wednesday, February 26, 2020 11:38 AM  
To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
Cc: Chris McDonald <Chris@mdac.ms.gov>  
Subject: Yazoo Pumps

Mr. Forsgren,

Good morning, I'm Mississippi's Commissioner of Agriculture and Commerce Andy Gipson. I ran into your colleague Owen McDonough today (who incidentally did a remarkable job explaining the new and greatly improved WOTUS rules) at an agriculture conference I'm attending in D.C.

I'm writing to you at a time and concerning a matter of great urgency - the pending Yazoo Backwater Pumps that would alleviate not all, but some of the historic flooding our farmers and homeowners experienced last year, and tragically are experiencing again right now. With over 440,000 acres underwater today, we are looking at a potential repeat of the historic 7 month flood of 2019.

I'm sincerely asking you and the EPA to please do everything in your power to help our people, our farmers, our neighbors and even our wildlife which are again being devastated by these floods. If my office can assist in any way, we will do so. Any word from you or the EPA on approving the new pump project will provide a glimmer of hope to our people, which frankly is desperately needed at a time such as this.

Thank you so much for your excellent work on WOTUS, and thanks for anything you or your office can do to move the needle on the pumps. Let me know what I can do to help. Thanks!

Sincerely,

Andy Gipson  
601-519-1880



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Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/31/2020 6:20:09 PM  
**To:** Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**CC:** Palmer, Leif [Palmer.Leif@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** RE: Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

Mary and David,

Perhaps we should set up a quick call on Monday. I have a few questions on this.

Lee

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**From:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>  
**Sent:** Friday, January 31, 2020 12:27 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Palmer, Leif <Palmer.Leif@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** Attorney Client Privileged/Deliberative – Do Not Release: Yazoo Pump Projects - 2019 Submission

Attorney Client Privileged/Deliberative – Do Not Release

Mary, Lee and David,

Good afternoon. Following up on our call last week, the Yazoo team has developed the attached document examining the 2019 Yazoo Pump submission from the USACE Vicksburg.

Please let us know if you need additional information.

Thanks  
Jeaneanne



Message

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 2/26/2020 2:19:51 PM  
**To:** Spraul, Greg [Spraul.Greg@epa.gov]  
**Subject:** FW: UPDATED Administrator's Binder  
**Attachments:** 2020.02.19 - Program Review - Regional Issues Table of Contents.docx; 2020.02.25 - UPDATED Administrator Full Binder.zip

Greg,

This is what Tony sent last night.

Lee

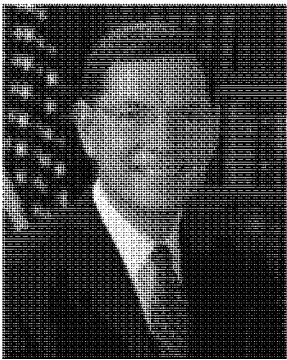
Hello Team – Attached, please find a digital copy of the full binder with updated factsheets. Also attached is the table of contents – the cyan highlighted pages reflect updated sheets from the briefing sessions. If you believe something has been missed or not the most up to date, please let me know and we will address as appropriate. Thank you for your assistance and support to date. Let me know if you have any questions.

Best,  
Tony

**Tony Frye**  
Director of Senate Affairs  
Office of Congressional Affairs  
Environmental Protection Agency  
Cell: Ex. 6 Personal Privacy (PP)



## Senate Environment and Public Works Committee Majority Members



### Chairman John Barrasso (R-Wyoming)

**BIO:** Chairman Barrasso has served in the U.S. Senate since 2007. In addition to his leadership as Chairman of the Senate Committee on Environment and Public Works, he is also the Chairman of the Senate Republican Conference. He previously served for four years in the Wyoming State Senate. Prior to his career in public service, he spent 24 years as an orthopedic surgeon, and was named Wyoming Physician of the Year. In the Senate, he also serves on the Committee on Energy and Natural Resources, the Committee on Indian Affairs, and the Committee on Foreign Relations.

### ISSUES OF CONCERN

- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **RFS**
  - Opposes year-round sale of E15.
  - Supports relief to small refineries and opposes re-allocation of the annual renewable volume obligation of small refineries to other refineries after setting the volume obligations.
  - Anti-backsliding Analysis: In a letter, he indicated EPA ignored the will of Congress and CAA requirements by not completing the air quality impacts study. He asked that EPA complete the study by September 30, 2018. EPA responded that his requested deadline will not be met, but the Agency will accelerate the previously indicated completion date of September 2024.
- **Methane**
  - Supports EPA's updated methane standards for the oil and gas industry.
- **WOTUS**
  - Supports EPA's recently finalized Navigable Waters Protection Rule.
- **Steam Electric ELG**
  - Concerned about regulatory burden on electric power plants.
  - Current Status: Proposed changes to this rule were released in November 2019 with a 60-day public comment period.
- **CWA Section 401**
  - Supports EPA's efforts to modernize Section 401 of the Clean Water Act.
- **USE IT Act**
  - Sponsored the USE IT Act, which would support carbon utilization and direct air capture research. EPA provided technical assistance on this legislation, which passed out of SEPW in April 2019.
  - The House Energy and Commerce Committee held a hearing on the USE IT Act House companion bill in early February 2020.
- **PFAS**
  - Opposed legislative efforts that would have designated PFAS as hazardous substances under CERCLA and required the EPA to set an MCL for PFAS, both partly due to strict timelines set forth in the proposed legislative language.
- **Class VI Wells**
  - Supports EPA granting primacy to Wyoming for the permitting of Class VI wells, which are used for the geologic sequestration of CO<sub>2</sub>.
  - Current Status: EPA Region 8 is working with Wyoming and expects to propose granting primacy to Wyoming later this spring.



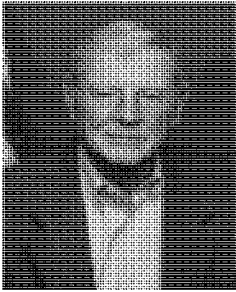
## **AW ENGAGEMENTS**

- **July 10, 2018: Introductory Call**
  - AW called Chairman Barrasso to introduce himself as Acting Administrator and stated he looked forward to testifying to EPW soon.
  - Also committed to travel to Wyoming for a visit with the Chairman.
- **August 1, 2018: Testified before EPW**
  - AW testified to EPW led by Chairman Barrasso on latest priorities of the Agency, fulfilling his promise to testify to EPW as first committee since becoming Acting Administrator.
- **August 22, 2018: Congratulatory Call**
  - AW called Chairman Barrasso to congratulate him on his primary election victory.
  - Chairman Barrasso asked about status of Uranium Part 192 rulemaking.
  - AW stated it would be completed soon and was the following month (September 2018) as OAR proposed withdrawal of Part 192 Rule.
- **December 19, 2019: 2020 RVOs**
  - Administrator Wheeler and Chairman Barrasso spoke over the phone to discuss the 2020 RVOs with the Renewable Fuel Standard.

## **QUESTIONS FROM CONFIRMATION HEARING**

- **Shutdown** - What is EPA doing to carry out its core missions during the government shutdown?
- **SREs** - Do you agree the EPA doesn't have the authority to limit when small refineries can apply for that hardship relief?
  - Do you agree the EPA doesn't have the authority to delay decisions on small refinery petitions beyond the 90 days?
- **GHGs** - What role does the EPA play in supporting innovations that would reduce greenhouse gas emissions?





## **Senator Jim Inhofe (R-Oklahoma)**

**BIO:** Senator Inhofe has served in the U.S. Senate since 1984. Prior to being elected to the United States Senate, he spent 7 years representing Oklahoma's 1<sup>st</sup> District in the House of Representatives. He served as Chairman of the Senate Committee on Environment and Public Works from 2003-2007 and 2015-2017. He currently serves as Chairman of the Armed Services Committee.

### **ISSUES OF CONCERN**

- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **RFS**
  - Opposed to allowing year-round sales of E15, saying it goes against EPA's long-standing interpretation, as well as plain reading of the CAA.
  - Opposes retroactive reallocation of compliance obligations from small refineries.
- **Tar Creek Superfund Site**
  - Sen. Inhofe's staff has worked closely with our partners to ensure we are collaboratively working with state and tribal partners.
  - Tar Creek was placed on the Administrator's Emphasis List in 2017.
  - Completed remediation of 3,000 residential properties, relocated four communities, removed over 4 million tons of mine waste, and plugged over 50 abandoned wells to prevent further groundwater contamination.
  - Our actions have resulted in children with elevated blood lead levels in the County dropped from 35% 20 years ago to 4% today.
- **SAFE Rule**
  - Supports EPA's SAFE Rule and the goal of reaching One National Standard.
- **Wood Heaters**
  - Supports an extension of the sell through period for wood heaters by two years into 2022.
  - Current status of EPA rulemaking: EPA has sent a final rule to OMB for interagency review.

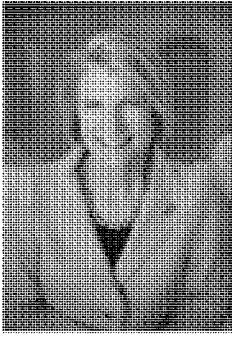
### **AW ENGAGEMENTS**

No official calls or meetings since confirmation process for Deputy Administrator.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **ACE** - Can you address the mischaracterizations of the proposed ACE Rule?
- **WOTUS** - What work is EPA doing on the WOTUS Rule?
- **RFS** - Will any RFS reset rulemaking be based on market realities including the increased demand for zero, for E0 that the market is seeing today?





## **Senator Shelley Moore Capito (R-West Virginia)**

**BIO:** Senator Capito has served in the U.S. Senate since 2015 as the first female Senator from the state of West Virginia. Prior to her historic election to the Senate, she represented West Virginia's 2<sup>nd</sup> Congressional District for 14 years in the House of Representatives and served in the West Virginia House of Delegates. In addition to serving on the Committee on Environment and Public Works, she is a member of the Committee on Appropriations, the Committee on Rules and Administration, and the Committee on Commerce, Science, and Transportation.

### **ISSUES OF CONCERN**

- **PFAS**
  - Concerned about PFAS contamination at the Chemours Washington Works facility.
  - Sponsored or cosponsored various pieces of legislation on PFAS including ones requiring EPA to set an MCL under the SDWA and designate PFAS as hazardous substances under CERCLA.
  - Current Status: EPA has sent a proposed regulatory determination under SDWA for PFAS to OMB for interagency review.
- **RFS**
  - Supports small refinery exemptions, especially for the Ergon, WV facility.
  - Opposes higher RVO's.
- **Aluminum criteria**
  - Concerned about impact on coal mining of the proposed EPA water quality standard revisions to West Virginia aluminum criteria.
  - Current Status: EPA is working closely with the state and hopes to have a path forward soon.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Wood Heaters**
  - Supports an extension of the sell through period for wood heaters by two years into 2022.
  - Current Status: EPA has sent a final rule to OMB for interagency review.
- **Permit as a Shield/Conductivity Criteria**
  - EPA is considering public comments on West Virginia's NPDES permit-as-a-shield program revisions and will determine next steps. The public comment period closed October 17.

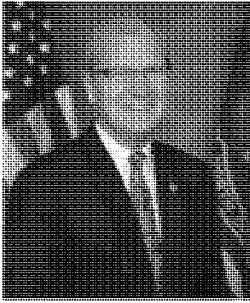
### **AW ENGAGEMENTS**

- **September 27, 2019: Meeting with Senator Capito**
  - Sen. Capito wanted to discuss the ACE Rule and Permit as a Shield Conductivity Criteria.
- **March 12, 2019: Call with Senator Capito**
  - Administrator Wheeler spoke with Senator Capito to discuss small refinery exemptions.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **PFAS** - Will EPA be recommending a cleanup standard for PFAS?
- **DWSRF** - Are there programs under the Drinking Water SRF to help rural systems prevent leaks?





## **Senator Kevin Cramer (R-North Dakota)**

**BIO:** Senator Cramer has served in the U.S. Senate since 2019. He previously represented North Dakota in the House of Representatives from 2013 to 2019. Prior to coming to Washington, he served as North Dakota's Public Service Commissioner – a position that then-Governor John Hoeven appointed him to in 2003 and was subsequently elected to in 2004. In the Senate, he also serves on the Veterans' Affairs Committee and the Senate Armed Services Committee.

### **ISSUES OF CONCERN**

- **RFS**
  - Understands the impact of bio- and petro- on North Dakota's economy, but believes progress can be made without a government mandate.
  - Shimkus/Flores 21<sup>st</sup> Century Fuels Act: Senator Cramer has expressed interest in receiving technical assistance on the Shimkus/Flores legislation. Currently there is no Senate companion bill.
- **Fugitive Emissions**
  - Concerned about the possibility of fugitive emissions violating New Source Performance Standards for oil and gas operations.
  - EPA responded to his concerns on January 16, 2020.
- **SAFE**
  - Supports EPA's SAFE Rule and the goal of reaching One National Standard.
- **Class VI Wells**
  - Then-Congressman Cramer was a strong advocate for EPA approving the State of North Dakota's application for primacy over the Safe Drinking Water Act Underground Injection Control program for carbon sequestration wells, known as Class VI.
  - Current Status: EPA approved North Dakota's application in April 2018.
- **WOTUS**
  - Strongly supports the recently finalized Navigable Waters Protection Rule.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.

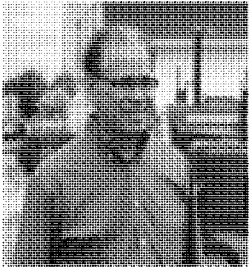
### **AW ENGAGEMENTS**

- **November 30, 2018: Meeting**
  - Following his election to the Senate, then-Congressman Cramer requested a meeting with Administrator Wheeler to discuss biofuels.
- **January 3, 2019: Open House**
  - Administrator Wheeler visited Senator Cramer's Open House for the start of this Congress.
- **October 7, 2019: North Dakota Visit**
  - Administrator Wheeler attended several events in North Dakota during his visit in October 2019, including a WOTUS roundtable with Senator Cramer.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **RFS** - What exactly happens to the RFS in 2022 if we do nothing? What options are there now?





## **Senator Mike Braun (R-Indiana)**

**BIO:** Senator Braun has served in the U.S. Senate since 2019. Prior to serving in the Senate, he served as a member of Indiana's General Assembly. He had an extensive career in business, helping form Meyer Distributing in 1981, where he enjoyed great success in the auto industry. He holds an MBA from Harvard Business School.

### **ISSUES OF CONCERN**

- **Cleaner Trucks Initiative**
  - Staff from Senator Braun's office have been very interested in the Cleaner Trucks Initiative, including participating in multiple phone calls with OAR and OCIR.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.
- **RFS**
  - Opposes small refinery exemptions, believing that the exemptions should be given only to refineries that exhibit economic hardship.

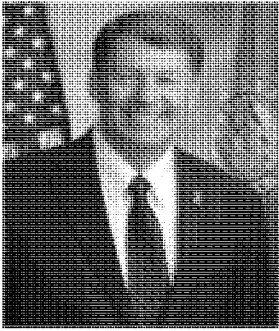
### **AW ENGAGEMENTS**

- **January 10, 2019: Meeting**
  - Administrator Wheeler met with Senator Braun during his confirmation process.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **WOTUS** - What is EPA doing to clarify the definition of "Waters of the U.S.?"
- **Personal** - Do you consider yourself a conservationist?
  - How will you measure your own success in this job once you get into it?





## **Senator Mike Rounds (R-South Dakota)**

**BIO:** Senator Rounds has served in the U.S. Senate since 2015. He has an extensive background in public service, first serving as a member of the South Dakota State Senate and later serving as South Dakota's Governor from 2003-2011. He enjoyed a successful career in both the insurance and real estate industries. In the Senate, he also serves on the Veterans' Affairs Committee, the Armed Services Committee, and the Committee on Banking, Housing, and Urban Affairs.

### **ISSUES OF CONCERN**

- **RFS**
  - Supports EPA's decision to make E15 available year-round.
  - Concerned with 2020 RVOs.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Sue and Settle**
  - Supports EPA's efforts to end the practice of "sue and settle."
- **Strengthening Transparency in Regulatory Science Rule**
  - Supports the Strengthening Transparency in Regulatory Science Rule.

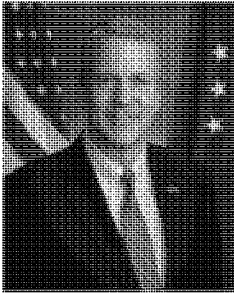
### **AW ENGAGEMENTS**

- **August 21, 2018: Introductory Meeting**
  - AW called Senator Rounds for an introductory conversation.
  - The Senator requested an update on the Agency's implementation of the RFS.
  - Additionally, the Senator requested EPA grant a waiver for year-round use of E15.
  - Senator Rounds told the Administrator to "stay the course" on your initiatives.
  - The Senator encouraged the Administrator to use sound science in his decision making.
- **December 11, 2018: Senator Rounds attended the WOTUS Step 2 rollout event at EPA**
  - Senator Rounds spoke at the event along with 13 other members, expressing their support of the new WOTUS rule.
- **July 24, 2019: RFS Meeting convened by Senator Thune**
  - Administrator Wheeler met with Senator Rounds and several others to discuss the RFS.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **E15** - Will you commit to finalizing the EPA's rule permitting year-round sale of E15 before the summer?
- **SREs** - What can EPA do while granting small refinery exemptions to honor the guidelines of the law to meet the goals for ethanol production?





## **Senator Dan Sullivan (R-Alaska)**

**BIO:** Senator Sullivan has served in the U.S. Senate since 2015. Previously, he served as Alaska's Attorney General and as Commissioner of Alaska's Department of Natural Resources. He also served as the Assistant Secretary of State for Economic, Energy, and Business under Secretary of State Condoleezza Rice during the Bush Administration. A member of the United States Marine Corps since 1993, he is currently a Colonel in the Marine Corps Reserve.

### **ISSUES OF CONCERN**

- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.
- **Marine Debris**
  - Sponsored the Save Our Seas Act 2.0 which passed the Senate on January 9, 2020.
  - EPA has no specified, direct role in the new law and no appropriated funds, although Co-Chair of the Task Force and solely running the Agency's own Trash-Free Waters program.
- **Alaska Grants**
  - Supports increased funding for the Rural Alaska Village and Rural Communities program.
  - FY19 minibus funded at \$24.2M, which provided funding for 13 projects.
  - FY20 President's Budget Request was for \$3M.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Remote Generators**
  - Sponsored the Alaska Remote Generator Reliability and Protection Act, which was signed into law and directed the EPA to revise certain regulations regarding particulate matter emissions standards for nonemergency stationary diesel engines in remote areas of Alaska.
  - EPA issued a final rule in October 2019 to exempt remote parts of Alaska from Tier 4 requirements on small generators.
- **Small and Disadvantaged Communities Drinking Water Grant Program**
  - Sponsored the Small and Disadvantaged Communities grant program and worked to get it included in the WIIN Act of 2016.
  - Discouraged by EPA's use of a formula funding for the program rather than a competitive grant process.
  - Recently, OCIR has worked with them on technical assistance to bring the program more in line with the Senator's original vision.

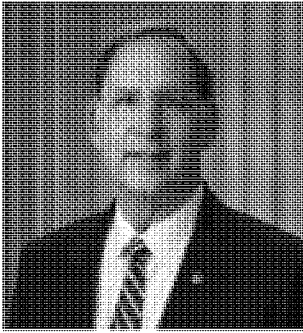
### **AW ENGAGEMENTS**

- **January 14, 2019: Meeting**
  - Administrator Wheeler met with Senator Sullivan during his confirmation process.
- **August 17-21, 2019: Alaska Trip**
  - Administrator Wheeler attended several events with Senator Sullivan when he visited Alaska.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **Alaska Visit** - Will you commit to coming to Alaska?
- **Murray Energy** - What was your role in representing Murray Energy?





## **Senator John Boozman (R-Arkansas)**

**BIO:** Senator Boozman has served in the U.S. Senate since 2011. He graduated from the Southern College of Optometry in 1977 and went on to become a prominent optometrist in northwest Arkansas. Prior to serving in the Senate, he was active in his local community as a member of the Rogers School Board and worked as a volunteer optometrist. He also serves on the Committee on Agriculture, Nutrition, and Forestry, the Committee on Veterans' Affairs, the Appropriations Committee, and as a member of the Helsinki Commission.

### **ISSUES OF CONCERN**

- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.
- **Vertac Superfund Site**
  - Sen. Boozman has inquired and asked to stay updated on the site.
  - Current Status: EPA completed its fifth five year review in February 2019.
    - Almost half of the Vertac site has been put back into use by the City of Jacksonville.
    - Numerous cleanup actions have been completed at the site which have reduced the further spread of contaminants and the threat of exposure to dioxin wastes from the tanks and drums on site, as well as the threat of dioxin exposure from contaminated buildings and debris, soil and groundwater.
- **Dicamba**
  - Concerned over the large number of dicamba damage reports in the State of Arkansas.
  - Arkansas has banned in season use of dicamba.
  - Dicamba is registered through December 20<sup>th</sup>, 2020.
- **WIFIA/SRF WIN Act**
  - Sponsored the “SRF WIN Act,” a provision included in America’s Water Infrastructure Act of 2018, that allows for additional WIFIA borrowing for SRF programs.

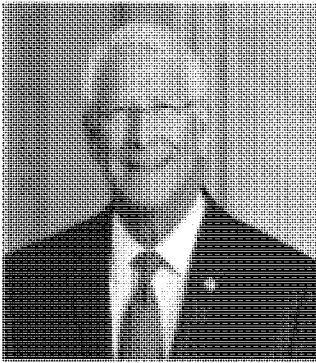
### **AW ENGAGEMENTS**

- **January 9, 2019: Meeting**
  - Administrator Wheeler met with Senator Boozman during his confirmation process.

### **QUESTIONS FROM CONFIRMATION HEARING**

- **Rulemaking Process** - Will EPA be more transparent about their rulemaking process?
  - What have you done and what do you plan to do in the future to facilitate a stronger level of trust between EPA and rural America?
  - Can you please explain the environmental and economic benefits regulatory certainty provides?





### **Senator Roger Wicker (R-Mississippi)**

**BIO:** Senator Wicker has served in the U.S. Senate since 2007. Prior to serving in the Senate, he represented Mississippi's First Congressional District in the House of Representatives for 14 years, and previously served in the Mississippi State Senate. A veteran, Senator Wicker served in the United States Air Force, retiring from the Reserves in 2004 at the rank of lieutenant colonel. In the Senate, he is the Chair of the Helsinki Commission, and is also a member of the Senate Armed Services Committee and the Rules and Administration Committee.

### **ISSUES OF CONCERN**

- **RFS**
  - Opposes year-round sale of E15.
  - Opposes retroactive reallocation of compliance obligations from small refineries.
  - Expressed interest in the Small Refinery Exemption for the Ergon-West Virginia refinery.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.
- **Underground Storage Tanks**
  - Supports extending deadline for System Upgrade Requirements to 2024 for the operation and maintenance of USTs.
  - Current Status: Implementation will be phased in from 2018 to 2021.
- **Yazoo Backwater Area Pumps Project Clean Water Act Section 404(c) Action**
  - Highly supportive of EPA approving the use of pumps to mitigate flooding concerns in west-central Mississippi (Yazoo Backwater Area).
- **MS-Grenada Manufacturing LLC (aka Rockwell International Wheel & Trim or “Rockwell Grenada”)**
  - Sen. Wicker's staff attended the Site listing and other public meetings and has been supportive of referral of the cleanup from RCRA to the Superfund program.
  - EPA's priority is to protect the health of workers at the manufacturing facility and residents of the adjacent neighborhood.
  - Former R4 RA Trey Glenn discussed activities at the site with the Senator during a courtesy visit in July 2018.
- **MS-Mississippi Phosphates Corporation**
  - Former R4 RA Trey Glenn discussed activities at the site with the Senator during a courtesy visit in July 2018 .
  - EPA arranged for Sen. Wicker's for elected officials' staff to tour the Site in March 2018 and routinely briefs them on Site status. His office is supportive of the cleanup remedy at the site
  - Sen. Wicker's office has also expressed interest in Site reuse.
- **Pearl River Flood Control Project**
  - Project is controversial. Senator Wicker strongly supports the project and has conveyed that to Region 4 leadership.
  - Currently, this is a non-Federal agency proposed project.
  - The applicant has not yet filed the Feasibility Study/Draft Environmental Impact Statement which triggers EPA's formal review under the National Environmental Policy Act (NEPA). EPA will continue to work with the applicant to address technical concerns.



## **AW ENGAGEMENTS**

- **September 23, 2018: Telephone Call**

- AW called Senator Wicker to discuss Wicker's support for the RFS Small Refinery Waiver and provide an update on EPA's response.
- During the call, Senator Wicker sought an update to EPA's response to the Ergon-West Virginia Small Refinery Exemption – which is still being evaluated by DOE. Ergon-West Virginia is a subsidiary of a company in Mississippi.
- AW detailed the impact of the case and efforts the Agency is taking with DOE to analyze the company's petition.

- **March 15, 2019: SREs and Yazoo**

- Administrator Wheeler discussed a pending SRE and the Mississippi Delta Yazoo pumps with Senator Wicker.

- **May 15, 2019: Meeting**

- Administrator Wheeler met with Senators Wicker and Hyde-Smith with Army Assistant Secretary RD James.

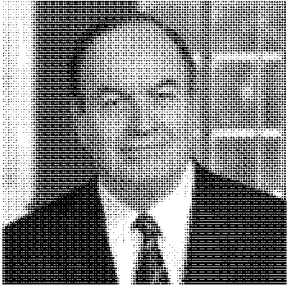
- **December 17, 2019: Introductory meeting with Governor-elect Reeves**

- Administrator Wheeler attended an introductory meeting for Governor-elect Tate Reeves with Senator Hyde-Smith and Senator Wicker. They also discussed the Yazoo Backwater Area Pumps.

## **QUESTIONS FROM CONFIRMATION HEARING**

N/A





## **Senator Richard Shelby (R-Alabama)**

**BIO:** Senator Shelby is in his sixth term in the U.S. Senate, having represented Alabama since 1987. A lifelong public servant, he also served 8 years in the House of Representatives and eight years in the Alabama state legislature. In the Senate, he is the Chairman of the Committee on Appropriations, and also serves on the Committee on Banking, Housing, and Urban Affairs and the Committee on Rules and Administration.

### **ISSUES OF CONCERN**

- **WOTUS**
  - Supports the recently released Navigable Water Protection Standard.
- **Paris Climate Accord**
  - Supported U.S. withdrawal from Paris Climate Accord.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Biogenic CO2**
  - Supports EPA's efforts to declare biomass as carbon neutral.
- **Wood Heaters**
  - Supports an extension of the sell through period for wood heaters by two years into 2022.
  - Current Status: EPA has sent a final rule to OMB for interagency review.

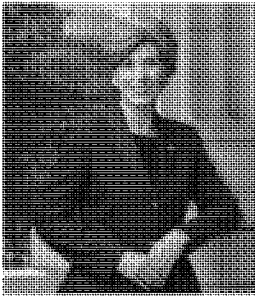
### **AW ENGAGEMENTS**

N/A

### **QUESTIONS FROM CONFIRMATION HEARING**

N/A





### **Senator Joni Ernst (R-Iowa)**

**BIO:** In November 2014, Joni was elected as the first woman to serve in federal elected office from the State of Iowa, and also became the first female combat veteran elected to serve in the U.S. Senate. In addition to the Environment and Public Works Committee, Senator Ernst serves on the Armed Services Committee, the Agriculture, Nutrition and Forestry Committee, the Judiciary Committee, and the Small Business and Entrepreneurship Committee.

## **ISSUES OF CONCERN**

- **RFS**
  - Major supporter of the RFS program.
  - Over the course of the 115<sup>th</sup> Congress, she signed 12 letters to the EPA Administrator or to the President related to the RFS.
  - Supports higher RVO's.
  - Opposes "waiver caps" that are designed to lower RIN prices.
  - Supports year-round E15 sales.
  - Opposes small refinery waivers.
- **WOTUS**
  - Supports the recently released Navigable Waters Protection Rule.
- **Gliders**
  - Opposed Obama EPA action limiting the use of glider kits in the heavy-duty trucking industry.
- **Des Moines TCE Site**
  - Remedies have been in place at this Site since the mid-1990s. Litigation has been on-going with the PRPs since 2010. The United States recently received a very favorable judgment that the PRPs have appealed to the Eighth Circuit.
  - EPA, Iowa Department of Natural Resources (IDNR), the City of Des Moines, and representatives from the PRPs all would like the site also put back into productive reuse.
  - As this matter is in current litigation, while the Agency always strives to resolve matters, we are not able to comment further regarding any ongoing discussions with the PRPs.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.

## **AW ENGAGEMENTS**

- **July 20, 2018: Introductory Call**
  - Administrator Wheeler called Senator Ernst to discuss the RFS RVP waiver. She requested administrative action allowing for the sale of E-15 year-round.
- **August 2, 2018: Breakfast with Senators Ernst and Grassley**
  - Administrator Wheeler went to the Senate Dining Room for breakfast with the Senators. The Senators used the opportunity to further discuss the RFS and detail their desire to expand the use of biofuels in the nation's transportation network.



- **November 28, 2018: Meeting with Senators Ernst and Grassley**
  - Administrator Wheeler went to the Senate to meet with Senators Ernst and Grassley. Due to an unforeseen scheduling conflict, Senator Ernst led the meeting while Senator Grassley popped in to say hello, detail his points and return to another meeting.
  - During the discussion, Senator Ernst discussed the impending E-15 rulemaking and reset in accordance with President Trump's executive order. Administrator Wheeler provided an update on the process.
  - Senator Ernst asked EPA to "bump" up the date of rulemaking to earlier than February 1<sup>st</sup>, the Administrator explained it would be difficult because the same staff working on E15 are working on RVO's.
  - Further, the Senator then discussed the Glider Kit rulemaking and expressed great desire in undoing the rulemaking restricting production of glider kits.
  - Senator Ernst asked the Administrator to speed up rulemaking process, the Administrator explained that the rule must be air tight to stand judicial scrutiny and will take time.
- **December 11, 2018: Senator Ernst attended the WOTUS Step 2 rollout event at EPA**
  - Senator Ernst spoke at the event along with 13 other members, expressing their support of the new WOTUS rule.
- **January 10, 2019: Meeting**
  - Administrator Wheeler met with Senator Ernst during his confirmation process.
- **May 15, 2019: Call**
  - Administrator Wheeler had a call with Senator Ernst to discuss the RFS.
- **July 24, 2019: RFS Meeting convened by Senator Thune**
  - Administrator Wheeler met with Senator Ernst and several others to discuss the RFS.
- **October 17, 2019: Call**
  - Administrator Wheeler had a call with Senator Ernst to discuss the 2020 RVO's.

#### **QUESTIONS FROM CONFIRMATION HEARING**

- **E15** - Will you reaffirm your commitment to finalize the E15 rulemaking before the summer?
- **SREs** - RIN prices have dropped dramatically since President Trump took office. So, with the RIN prices being so much lower today than they were two years ago, do you agree that this means there is less economic hardship associated with having to purchase those RINs?
  - What is the EPA's role in granting or denying a full or partial waiver?
  - Can you assure me then that you will be examining those exemptions and not giving blanket exemptions, as it appears has been done in the past by your predecessor?
- **WOTUS** - Can you elaborate on how the WOTUS replacement rule provides more clarity to our farmers and landowners than the original 2015 rule?



**Senate Appropriations Committee Majority Members  
Interior-Environment Subcommittee**



**Chairman Lisa Murkowski (R-Alaska)**

**BIO:** Chairman Murkowski has served in the U.S. Senate since 2002. A graduate of Georgetown University and Willamette University College of Law, she began her career as an attorney in Anchorage's District Court and in private practice. She was elected to the Alaska House of Representatives in 1998 and was later elected its Majority Leader before she was appointed to the U.S. Senate. She was appointed by her father, who resigned from the Senate to assume Alaska's governorship. She also serves as the Chairman of the Senate Energy and Natural Resources Committee, as a member of the Senate Health, Education, Labor, and Pensions Committee, and as a member of the Senate Indian Affairs Committee.

**ISSUES OF CONCERN**

- **WOTUS**
  - Supports the recently finalized Navigable Waters Protections Rule.
- **Wood Heaters**
  - Cosponsored the Wood Heaters Emissions Reduction Act of 2019, which would establish a grant program that would incentivize the use of cleaner, energy-efficient heaters. This legislation is modeled on the Diesel Emissions Reduction Act (DERA).
  - Current Status: EPA has sent a final rule to OMB for interagency review.
- **PFAS**
  - Cosponsored the PFAS Action Act of 2019, which would designate PFAS chemicals as hazardous substances under CERCLA.
  - Current Status: EPA has not yet sent a proposal to designate PFOA and PFOS as hazardous substances to OMB for interagency review.
- **Fairbanks PM 2.5**
  - Supports efforts to have the Fairbanks North Star Borough come into attainment with the PM2.5 NAAQS standards. Currently it is in "Serious" nonattainment.
  - Current Status: Alaska submitted a plan to meet "Serious" area planning requirements on December 13, 2019. The EPA issued a notice stating the Fairbanks Serious area plan was administratively complete on January 9, 2020 and will review the plan by early 2021.
- **Remote Generators**
  - Cosponsored the Alaska Remote Generator Reliability and Protection Act, which was signed into law and directed the EPA to revise certain regulations regarding particulate matter emissions standards for nonemergency stationary diesel engines in remote areas of Alaska.
  - Current Status: EPA issued a final rule in October 2019 to exempt remote parts of Alaska from Tier 4 requirements on small generators.
- **Small Remote Incinerators**
  - Concerned about remote Alaska's ability to comply with the 2013 commercial and industrial solid waste incineration units (CISWI) rule.
  - Current Status: EPA plans to conduct a rulemaking in the near future that will address the Small Remote Generator's concerns and incorporate the revised emission limits including less stringent testing and monitoring requirements for this subcategory.
- **Fish Grinding**
  - Supports the NPDES updates in July 2019 for offshore seafood processors.



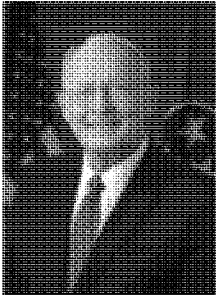
## **AW ENGAGEMENTS**

- **July 12, 2018: Call**
  - Acting Administrator Wheeler spoke with Chairman Murkowski as an introduction following his assumption of his new title. The conversation served as an opportunity for the Chair to reaffirm her priorities for the EPA and express interest in regular dialogue.
- **March 14, 2019: Call**
  - Administrator Wheeler spoke with Chairman Murkowski about the impending regional realignment and to discuss the next steps forward.
- **August 19, 2019: Alaska Trip**
  - Administrator Wheeler visited Alaska at the request of Senators Murkowski and Sullivan, discussing a range of issues including PFAS and the Fairbanks PM2.5 nonattainment.

## **QUESTIONS FROM 2019 BUDGET HEARING**

- **PFAS** - Can you give the Committee an estimate in terms of EPA's timelines for listing PFOS or any compounds as hazardous substances?
- **Tongass Rain Forest** - Will you commit to continue to work with my office on the Tongass rain forest?
- **Fairbanks PM2.5** - What is EPA doing to ensure Fairbanks comes into compliance with their PM2.5 issue?
- **Natural Gas** - What are you doing to increase access natural gas?
- **Small Remote Incinerators** - What are you doing to resolve the issues surrounding small remote incinerators?
- **Fish Grinding** - What is EPA doing to resolve the fish grinding permit issue?
- **Small Remote Generators** - What is EPA doing to ensure that rural Alaska has access to diesel generators?





### **Senator Lamar Alexander (R-Tennessee)**

**BIO:** Senator Alexander is the only Tennessean to ever serve as both Governor and Senator. He served as Governor from 1979-1987, where he helped increase teacher pay and attracted many major auto companies to the state. He was elected to the U.S. Senate in 2002 and is retiring at the end of this term. He is the Chairman of the Committee on Health, Education, Labor, and Pensions, and serves on the Committee on Energy and Natural Resources and the Committee on Rules and Administration.

### **ISSUES OF CONCERN**

- **2012 MATS Rule**

- Supports the 2012 MATS rule and concerned with EPA's proposed updates to the MATS rule, which he discussed in a meeting with Administrator Wheeler in 2018.
- Senators Alexander and Carper wrote an op-ed in November 2019 in USA Today in which they defended the 2012 MATS rule and opposed EPA's proposed updates to the rule.
- Current Status: The MATS proposal published in the Federal Register on February 7, 2019 and the 60-day public comment period was open through March 8, 2019. EPA held a public hearing in Washington, DC on March 18, 2019.

- **Methylene Chloride**

- Concerned with the timeline for finalizing the methylene chloride rulemaking rule. In 2018, he met with a family whose son died due while using a paint remover with methylene chloride.
- Current Status: EPA finalized a rule to ban the manufacture, processing, and distribution of methylene chloride for consumers in November 2019.

- **Kigali Amendment to the Montreal Protocol**

- Supports ratification of the Kigali amendment and sent a letter to the President in June 2019 urging him to send the Kigali amendment to the Montreal Protocol to the Senate for advice and consent.
- Per WH instructions later in time, EPA did not respond.
- While the EPA is fully engaged in this process, particularly as it relates to possible domestic implementation of the Amendment, it is the Department of State that manages the negotiation of international treaties.
- Cosponsored the American Innovation and Manufacturing (AIM) Act, which would phase down the domestic consumption of HFCs. EPA has provided technical assistance on the AIM Act.

### **AW ENGAGEMENTS**

- **January 3, 2019: Senate Open House**

- Saw Senator in hallway during open houses in Senate.
- Senator and his team asked to meet to discuss the MATS proposal.

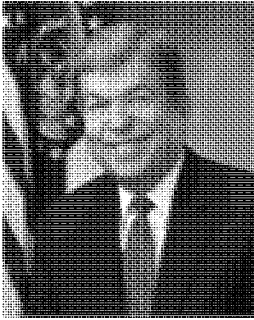
- **January 28, 2019: Meeting**

- The Administrator met with Senator Alexander as part of his nomination process. During the meeting the two discussed the Senator's support for the existing MATS rule and opposition to altering the standard.

### **QUESTIONS FROM 2019 BUDGET HEARING**

N/A





### **Senator Roy Blunt (R-Missouri)**

**BIO:** Senator Blunt has served in the U.S. Senate since 2011. A lifelong public servant, he previously served 7 terms in the House of Representatives, where he served as the Majority Whip from 2003-2007 and later as Minority Whip from 2007-2009. In the Senate, he chairs the Senate Rules Committee and serves on the Select Committee on Intelligence and the Committee on Commerce, Science, and Transportation. He is the Chairman of the Senate Republican Policy Committee.

### **ISSUES OF CONCERN**

- **RFS**
  - Supports higher RVOs.
  - Supports year-round E-15.
  - Opposes small refinery hardship waivers.
- **ACE/CPP**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Westlake Superfund site**
  - Supports EPA's cleanup efforts at the Westlake Superfund site.
  - Current Status: In September 2018, the EPA released its final remediation plan to clean up radioactive waste at the site. The \$205 million plan will remove roughly 70 percent of the waste.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.

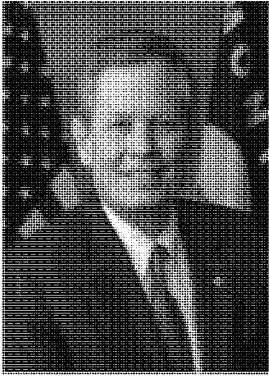
### **AW ENGAGEMENTS**

- **September 27, 2018: Event at EPA HQ**
  - Senator Blunt came to EPA HQ to join in a Signing Ceremony event for the West Lake Superfund site and provided brief remarks expressing support for the action.
- **October 2, 2018: Call**
  - The Administrator spoke with Senator Blunt to discuss the West Lake ROD signing to express appreciation for the invitation to attend the event and relay positive words of encouragement the Senator had heard in the aftermath of the signing.
- **July 24, 2019: RFS Meeting convened by Senator Thune**
  - Administrator Wheeler met with Senator Blunt and several others to discuss the RFS.

### **QUESTIONS FROM 2019 BUDGET HEARING**

- **Westlake Superfund Site** - What actions is EPA taking to finish cleanup of the Westlake Superfund site?
- **SREs** - How are you going to look at the SRE waivers? Is there a way to ensure the appropriate volumes?
  - Do you need to give yourself a mechanism or do we need to give you one or is it just unreasonable to have that mechanism?





## **Senator Steve Daines (R-Montana)**

**BIO:** Senator Daines is a Montana native and graduated from Montana State University with a B.S. in Chemical Engineering. He spent 13 years with Procter & Gamble, and later worked at a software company before being elected to the House of Representatives in 2012. He was ranked the most effective freshman House member in 2013 and 2014. In the Senate, he also serves on the Senate Finance Committee, the Energy and Natural Resources Committee, and the Senate Indian Affairs Committee. He also serves as the Senate Chair of the Western Caucus

### **ISSUES OF CONCERN**

- **Butte Superfund Site**
  - Highly supportive of finding resolution to the site.
  - The Butte Area was added to Silver Bow Creek site in 1987. Since the late 1800s, mining wastes have been dumped into streams and wetlands near mining operations. These activities contaminated soil, groundwater and surface water with heavy metals. EPA completed several removal actions to clean up areas around former smelter sites, mine waste dumps, railroad beds, stream banks and channels, and residential yards to address immediate human health and environmental risks.
  - Current Status: EPA continues to work with the community, project stakeholders, and responsible parties to oversee the ongoing cleanup work.
- **Anaconda Superfund Site**
  - Highly supportive of finding resolution to the site.
  - In 1983, EPA placed on the Superfund program's National Priorities List to address the contamination. EPA is the lead agency with Atlantic Richfield Co. conducting site activities through administrative orders.
  - Current Status: Cleanup is complete at several areas within the site, operation and maintenance activities are ongoing. Cleanup is underway at the remaining areas.
- **Asbestos**
  - Supports and has introduced legislation seeking to ban the use of asbestos. Montana was home to extensive asbestos mining.
  - Current Status: In June 2018, EPA proposed a Significant New Use Rule (SNUR) to ensure that no new uses are initiated without EPA's review.
- **RFS**
  - Supports small refinery exemptions.
  - Opposes higher RVO's.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.

### **AW ENGAGEMENTS**

- **September 7, 2018: Montana Visit**
  - Administrator Wheeler visited Montana and toured the Anaconda and Butte Superfund sites with Senator Daines.

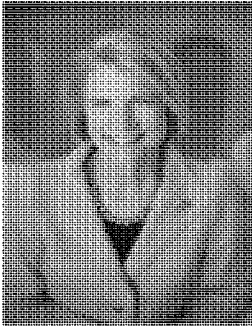


- **February 28, 2019: Call**
  - Senator Daines requested a call to speak with Administrator Wheeler prior to his confirmation vote. The two spoke briefly about the Senator's support for helping folks in the state clean up Superfund sites.

#### **QUESTIONS FROM 2019 BUDGET HEARING**

- **Superfund** - What does Congress need to do to remove barriers to superfund remediation?
  - Can you assure me that cleanup of the Anaconda Superfund Site will continue?
- **Asbestos** - Why did EPA list specific uses of asbestos instead of banning all new uses?





## **Senator Shelley Moore Capito (R-West Virginia)**

**BIO:** Senator Capito has served in the U.S. Senate since 2015 as the first female Senator from the state of West Virginia. Prior to her historic election to the Senate, she represented West Virginia's 2<sup>nd</sup> Congressional District for 14 years in the House of Representatives and served in the West Virginia House of Delegates. In addition to serving on the Committee on Environment and Public Works, she is a member of the Committee on Appropriations, the Committee on Rules and Administration, and the Committee on Commerce, Science, and Transportation.

### **ISSUES OF CONCERN**

- **PFAS**
  - Concerned about PFAS contamination at the Chemours Washington Works facility.
  - Sponsored or cosponsored various pieces of legislation on PFAS including ones requiring EPA to set an MCL under the SDWA and designate PFAS as hazardous substances under CERCLA.
  - Current Status: EPA has sent a proposed regulatory determination under SDWA for PFAS to OMB for interagency review.
- **RFS**
  - Supports small refinery exemptions, especially for the Ergon, WV facility.
  - Opposes higher RVO's.
- **Aluminum criteria**
  - Concerned about impact on coal mining of the proposed EPA water quality standard revisions to West Virginia aluminum criteria.
  - Current Status: EPA is working closely with the state and hopes to have a path forward soon.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Wood Heaters**
  - Supports an extension of the sell through period for wood heaters by two years into 2022.
  - Current Status: EPA has sent a final rule to OMB for interagency review.
- **Permit as a Shield/Conductivity Criteria**
  - EPA is considering public comments on West Virginia's NPDES permit-as-a-shield program revisions and will determine next steps. The public comment period closed October 17.

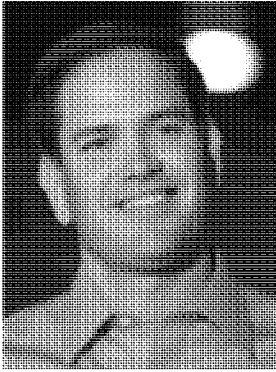
### **AW ENGAGEMENTS**

- **September 27, 2019: Meeting with Senator Capito**
  - Sen. Capito wanted to discuss the ACE Rule and Permit as a Shield Conductivity Criteria.
- **March 12, 2019: Call with Senator Capito**
  - Administrator Wheeler spoke with Senator Capito to discuss small refinery exemptions.

### **QUESTIONS FROM 2019 BUDGET HEARING**

N/A





## **Senator Marco Rubio (R-Florida)**

**BIO:** Senator Rubio has served in the U.S. Senate since 2011. A native Floridian, he received his bachelor's degree from the University of Florida and his juris doctorate from the University of Miami Law School. Prior to his election to the United States Senate, he serves as the City Commissioner for West Miami and served in the Florida House of Representatives, eventually becoming its Speaker. In the Senate, he also serves on the Committee on Foreign Relations, the Select Committee on Intelligence, the Committee on Small Business and Entrepreneurship, and the Special Committee on Aging.

### **ISSUES OF CONCERN**

- **WIFIA program**
  - Strong supporter of the WIFIA program.
  - Note: On February 13, 2019 EPA announced a \$40 million WIFIA loan to the Tohopekaliga Water Authority to help rehabilitate a sewer system that serves 300,000 Floridians.
- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **Harmful Algal Blooms (HABs)**
  - Sponsored the Restoring Resilient Reefs Act of 2019, which would reauthorize the United States Coral Reef Task Force, that among other things would examine the impacts of HABs.
  - Sponsored the South Florida Clean Coastal Waters Act of 2019, which would require the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to examine the effects of HABs.
- **Kigali Amendment to the Montreal Protocol**
  - Supports ratification of the Kigali amendment and sent a letter to the President in June 2018 urging him to send the Kigali amendment to the Montreal Protocol to the Senate for advice and consent.
  - Per WH instructions later in time, EPA did not respond.
  - While the EPA is fully engaged in this process, particularly as it relates to possible domestic implementation of the Amendment, it is the Department of State that manages the negotiation of international treaties.
  - Cosponsored the American Innovation and Manufacturing (AIM) Act, which would phase down the domestic consumption of HFCs. EPA has provided technical assistance on the AIM Act.
- **PFAS**
  - Concerned about PFAS contamination.
  - Cosponsored legislation to declare PFAS as hazardous substances under CERCLA.
  - Current Status: EPA has not yet sent the hazardous substance designation for PFOA and PFOS to OMB for interagency review.

### **AW ENGAGEMENTS**

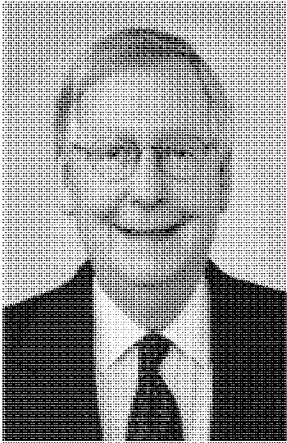
N/A

\*Note: Senator Rubio has been invited to serve as the keynote speaker at the upcoming 30<sup>th</sup> Annual Small Business Program Award Ceremony on May 7, 2020.

### **QUESTIONS FROM 2019 BUDGET HEARING**

N/A





### **Senate Majority Leader Mitch McConnell (R-Kentucky)**

**BIO:** First elected to the U.S. Senate in 1984, McConnell is Kentucky's longest-serving senator. Elected as the Senate Majority Leader unanimously by his Republican colleagues first in 2014 and again in 2016 and 2018, he is only the second Kentuckian to ever serve as Majority Leader in the U.S. Senate. Leader McConnell has served, again by the unanimous vote of his colleagues, as the Republican Leader since the 110th Congress. He is the longest-serving Senate Republican Leader in the history of the United States. In addition to the Senate Appropriations Committee, Majority Leader McConnell serves on the Agriculture, Nutrition, and Forestry Committee and the Rules & Administration Committee.

### **ISSUES OF CONCERN**

- **ACE Rule**
  - Supports the finalized ACE Rule and the repeal of the Clean Power Plan.
- **WOTUS**
  - Supports the recently finalized Navigable Waters Protection Rule.
- **Pesticide Registration for use on Hemp**
  - Highly supportive of efforts to bolster domestic hemp production, including the approval of pesticides for use on hemp.
  - Note: AA Dunn spoke at the Hemp Production Field Day at the University of Kentucky about the hemp pesticide applications that, at the time, EPA was in the process of reviewing. EPA has since approved all ten of the applications it received.

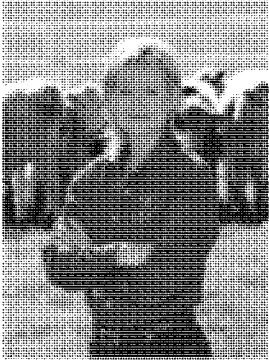
### **AW ENGAGEMENTS**

- **January 24, 2019: Meeting with Leader McConnell**
  - Administrator Wheeler met with Leader McConnell during his confirmation process.
- **June 18, 2019: Call with Leader McConnell**
  - Administrator Wheeler spoke with Leader McConnell on a variety of issues before the EPA.

### **QUESTIONS FROM 2019 BUDGET HEARING**

N/A





### **Senator Cindy Hyde-Smith (R-Mississippi)**

**BIO:** Senator Hyde-Smith was appointed to the Senate in April 2018 by Governor Phil Bryant, when she replaced the late Senator Thad Cochran. She previously served two terms as Mississippi's Commissioner of Agriculture and Commerce and served 12 years in the Mississippi State Senate. She is a graduate of Copiah-Lincoln Community College and the University of Southern Mississippi. In the Senate, she also serves on the Committee on Agriculture, Nutrition, and Forestry, the Committee on Energy and Natural Resources, and the Committee on Rules and Administration.

### **ISSUES OF CONCERN**

- **Ergon West Virginia SRE**
  - Heavily engaged with OCIR and OAR staff to stay up to date on the latest information.
- **Yazoo Backwater Area Pumps Project Clean Water Act Section 404(c) Action**
  - Highly supportive of EPA approving the use of pumps to mitigate flooding concerns in west-central Mississippi (Yazoo Backwater Area).
- **WOTUS**
  - Supports the recently released Navigable Waters Protection Rule.

### **AW ENGAGEMENTS**

- **March 21, 2019: SREs and Yazoo Pumps**
  - Senator Hyde-Smith requested a call to discuss her support for the RFS Small Refinery Waiver and support for the Yazoo Backwater Area Pumps Project.
- **May 15, 2019: Meeting**
  - Administrator Wheeler met with Senator Hyde-Smith and Senator Wicker along with Army Assistant Secretary RD James regarding the Yazoo Pumps.
- **December 17, 2019: Meeting with Governor-elect**
  - Administrator Wheeler met with Senator Hyde-Smith and Senator Wicker for an introductory meeting with Governor-elect Tate Reeves. The Yazoo Pumps were also discussed.

### **QUESTIONS FROM 2019 BUDGET HEARING**

- **Yazoo Backwater Pumps** - What are EPA and the Army Corps of Engineers doing to prevent flooding along the Mississippi Delta?



## **2008 YAZOO PUMPS CLEAN WATER ACT SECTION 404(C) FINAL DETERMINATION (MISSISSIPPI)**

### **BACKGROUND:**

- The Yazoo Backwater Area Pumps Project is a U.S. Army Corps of Engineers (Corps) Civil Works project designed to address flooding concerns in a 630,000-acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi. The estimated \$200+ million project was to be fully federally funded with no local cost-share.
- Project construction and operation, under a range of alternatives evaluated in the Final Supplemental Environmental Impact Statement, would have adversely impacted between 28,400 and 118,400 acres of wetlands and other waters of the United States.
- In 2008, EPA determined that these impacts would result in unacceptable adverse effects on fishery areas and wildlife and vetoed the project under Clean Water Act (CWA) Section 404(c).
- In October 2019, at the request of **Sen. Wicker's** office, EPA's Deputy Assistant Administrator for Water, Lee Forsgren, and Regional Administrator Mary Walker participated in a listening session with residents in Rolling Fork, MS.
- In March 2019, then Acting Regional Administrator Mary Walker met with Corps General Richard G. Kaiser to tour the Yazoo Backwater Area and discuss the issue.
- In 2018, an unsuccessful rider would have directed the Corps to begin construction on the Yazoo pumps project despite the 2008 CWA Section 404(c) Final Determination.
- Currently, EPA is reviewing information received from the Corps in late December 2019 to determine next steps.

### **KEY POINTS:**

- **Sen. Roger Wicker (R-MS), Sen. Cindy Hyde-Smith (R-MS),** Rep. Bennie Thompson (D-MS) and former Governor Phil Bryant (R-MS) have all engaged with EPA on this issue (correspondence, meetings, calls) in support of the pump project.
- Dozens of residents have written to EPA in 2019 and 2020 in support of the pump project, while hunting, fishing and other conservation groups oppose the project because of its extensive impacts to wetlands providing important habitat for fish and wildlife. Tax-payer watchdog groups and economists question the flood reduction benefits of the proposed project and criticize it as wasteful.

### **TALKING POINTS:**

- The EPA recognizes the disruptive impacts of the recent flooding along the lower Mississippi River and the Yazoo Backwater Area on the day-to-day lives of Mississippians and the economy of the area.
- On October 21, 2019 we participated in a listening session where we had the opportunity to hear first-hand from residents. We have an ongoing dialogue with the U.S. Army Corps of Engineers regarding potential options for providing flood protection and are reviewing information received from the Corps in late December 2019.
- We remain committed to working actively and cooperatively with the Corps on the potential flood control options they are considering as they relate to our Clean Water Act programs. Our shared goal is to support a long-term, viable solution.



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 11/6/2020 1:30:46 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]

**Subject:** Yazoo policy call

**Location:** Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 11/6/2020 11:00:00 PM

**End:** 11/6/2020 11:30:00 PM

**Show Time As:** Busy

**Required Attendees:** Walker, Mary; Fotouhi, David; Kevin Wheeler; Brittany Bolen



## Appointment

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**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/22/2020 9:36:23 PM  
**To:** R4DRA [R4DRA@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**CC:** Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]; Creswell, Michael [creswell.michael@epa.gov]  
**Subject:** Yazoo Senior Leadership Briefing  
**Location:** Microsoft Teams Meeting  
**Start:** 11/18/2020 1:00:00 PM  
**End:** 11/18/2020 1:45:00 PM  
**Show Time As:** Busy

**Required Attendees:** R4DRA; Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; Hoppe, Allison; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt; Allenbach, Becky; Nalven, Heidi; Wehling, Carrie; Marshall, Tom; Simons, Andrew; Neugeboren, Steven; Goodin, John; Wheeler, Kevin; Rountree, Marthea; Yesmant, Christopher; Buzzelle, Stanley; Creswell, Michael

---

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## Appointment

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**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/23/2020 12:13:41 PM  
**To:** R4DRA [R4DRA@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]  
**CC:** Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]  
**Subject:** Yazoo Bi Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting  
**Start:** 11/25/2020 6:30:00 PM  
**End:** 11/25/2020 7:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** R4DRA; Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; Hoppe, Allison; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt; Creswell, Michael; Allenbach, Becky; Goodin, John; Wheeler, Kevin

---

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## Appointment

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**From:** R4DRA [R4DRA@epa.gov]  
**Sent:** 10/22/2020 9:30:39 PM  
**To:** R4DRA [R4DRA@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]  
**CC:** Tomiak, Robert [tomiak.robert@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Yesmant, Christopher [Yesmant.Christopher@epa.gov]

**Subject:** Yazoo Bi-Weekly Leadership Meeting  
**Location:** Microsoft Teams Meeting

**Start:** 11/6/2020 1:00:00 PM  
**End:** 11/6/2020 1:45:00 PM  
**Show Time As:** Busy

**Required Attendees:** R4DRA; Walker, Mary; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Blevins, John; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Rubini, Suzanne; (Fite.Mark@epa.gov); Kajumba, Ntale  
**Optional Attendees:** Tomiak, Robert; Barger, Cindy; Frazer, Brian; Kaiser, Russell; McGill, Thomas; Calli, Rosemary; Ainslie, William; Ghosh, Mita; Hicks, Matt; Hoppe, Allison; Creswell, Michael; Allenbach, Becky; Wheeler, Kevin; Goodin, John; Nalven, Heidi; Wehling, Carrie; Neugeboren, Steven; Marshall, Tom; Simons, Andrew; Rountree, Marthea; Yesmant, Christopher

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## Appointment

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**From:** Jones, Aaryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C2BED08A5BD54DC5A9D59C5A345C9892-JONES, AARYN]  
**Sent:** 10/20/2020 2:54:49 AM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeananne [Gettle.Jeananne@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]  
**CC:** Fite, Mark [Fite.Mark@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Barger, Cindy [Barger.Cindy@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Allenbach, Becky [Allenbach.Bekky@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Wheeler, Kevin [Wheeler.Kevin@epa.gov]; Axelrod, Julie [Axelrod.Julie@epa.gov]; Tomiak, Robert [tomiak.robert@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Abrams, Nancy [Abrams.Nancy@epa.gov]

**Subject:** (Attachments and Call-in added) Yazoo Backwater EIS  
**Attachments:** Summary Comparison of 2007 2019 Pump Plans.docx; Yazoo Backwater Area Brief - DRA.pptx  
**Location:** Microsoft Teams Meeting

**Start:** 10/20/2020 1:00:00 PM  
**End:** 10/20/2020 1:45:00 PM  
**Show Time As:** Busy

**Required Attendees:** Walker, Mary; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeananne; Blevins, John; Palmer, Leif; Forsgren, Lee; Fotouhi, David; Bolen, Brittany; Rubini, Suzanne  
**Optional Attendees:** (Fite.Mark@epa.gov); Kajumba, Ntale; Ainslie, William; Creswell, Michael; Kaiser, Russell; Barger, Cindy; Goodin, John; Frazer, Brian; Neugeboren, Steven; Carrie Wehling; Nalven, Heidi; Ghosh, Mita; Hicks, Matt; Allenbach, Becky; McGill, Thomas; Calli, Rosemary; Wheeler, Kevin; Axelrod, Julie; Tomiak, Robert; Abrams, Nancy; Simons, Andrew; Marshall, Tom; Hoppe, Allison

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# Yazoo Basin Study Yazoo Backwater Area Supplemental EIS

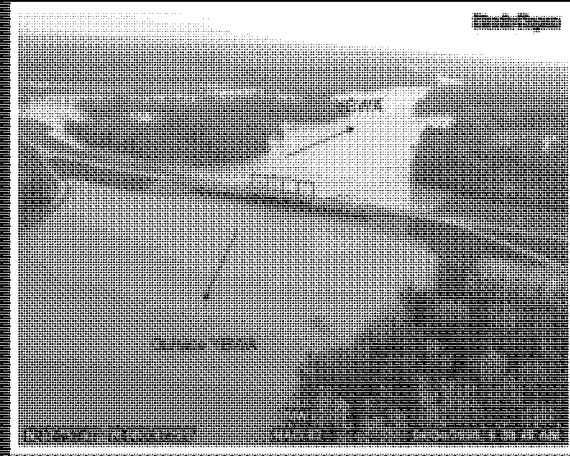


October 15, 2020



# Agenda

- Yazoo Background
- Purpose and Need
- Proposed Alternative (Recommended Plan)
- NEPA Process and Timeline
- Next Steps
- Discussion



Steele Bayou Flood Control Structure  
Proposed pumps location



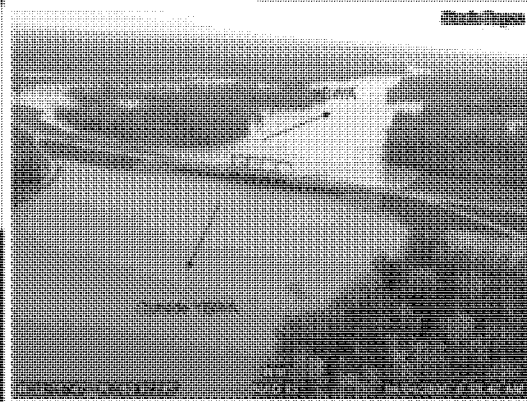
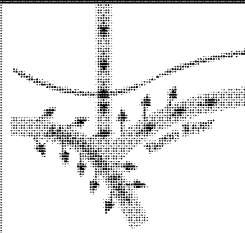
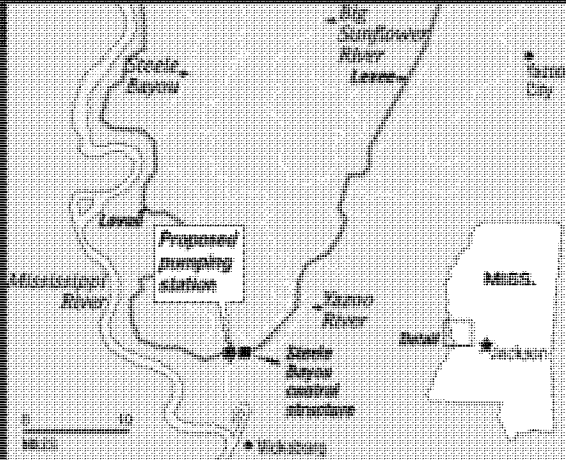
# Yazoo Backwater Area (YBA)



- **Project Location:** Yazoo Basin, 4 headwater tributaries, drains to flat lowlands along the Mississippi River ("the Delta").
- **Study Area:** ~630,000 acres in lower half of the basin



# Yazoo Pumps Project (2007)



Steele Bayou Flood Control Structure  
Site of proposed pumps



# YBA History

Date	Event
1927	16.6 million acres flooded, 246 lives lost, 700,000 people displaced
1928	Flood Control Act (FCA) – Congress authorized Mississippi River & Tributaries Project.
1936	FCA amended to extend to sub-basins and include floodways in AR & LA
1944	FCA 39 miles of levees and structures authorized for the east bank of the Yazoo
1954	COE develops plan to connect Sunflower River and Steele Bayou
1969	Steele Bayou Structure completed
1973	Record flood on MS River and tributaries



# YBA History (Cont.)

Date	Event
1978	Yazoo Backwater Area (YBA) levee and connecting channel completed.
1982	Re-evaluation of the economic feasibility of the pump features completed
1986	Pump contract awarded and Congress removes full federal funding of pumps from WRDA and requires local cost share.
1987	Pump coffer dam, inlet and outlet channels completed
1991	OMB directs COE to reformulate projects in Yazoo basin
1996	WRDA restores full federal funding
1998	Consensus meetings held by MS Levee Board
2000	USACE releases the Draft YBA Reformulation Report and EIS. EPA rated the EIS an EU-3 and provided comments to the USACE.
2007	USACE releases the Final YBA Reformulation Report and SEIS.
2008	Clean Water Act Section 404 (c) Veto – Final Determination
2019	~0.5 million acres, 2 lives lost, hundreds displaced



# Purpose

- Reduce flood damage to structures and cropland within 630,000 acres of the Lower Yazoo Basin (2007)





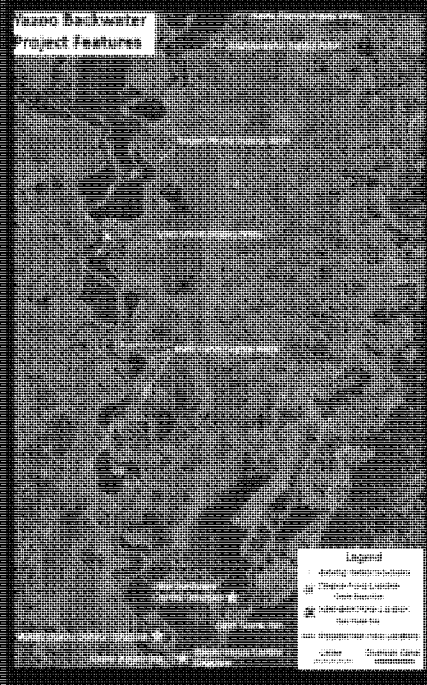
# Alternatives

Recommended Plan - 11/07 FSEIS and NOI (2020):

- Structural
  - 14,000-cfs pump station
    - *(For comparison, the 2001 mean annual flow for the Colorado River below Glen Canyon Dam was 11,000 cfs)*
  - Pump-on elevation of 87.0 ft NGVD (at Steele Bayou structure)
- Non-structural
  - Reforestation/conservation measures on up to 40,571 acres via perpetual conservation easements, ag-land below pump-on elevation
  - Maintain water flow during low-water periods (70-73 ft, NGVD)
- Project costs: \$220 million/\$2.1 million O&M



## Alternative (Cont.)



NOI 2020



# Environmental Resources

- Water Resources
  - Wetlands
  - Water Quality
  - Fisheries/aquatic habitat
  - Endangered Species
- Environmental Justice

Wetlands, fisheries, aquatic resources, terrestrial and water fowl resources (direct or indirect losses) – avoid, minimize and mitigate.

Models still satisfactory – identify losses and mitigation

Vicksburg- Bill went to a number of mitigation sites (1 years in Dec).Wetlands credits are coming quicker (4 or 5 projects)

Stage – ERDC Scientist –endangered species (other species, bats)



# NEPA Process

- USACE issued a Notice of Intent (NOI) to Prepare a SEIS on the Yazoo Basin Reformulation Study – April 16, 2020.
- EPA agreed to be cooperating agency. 5/15/20
- EPA participated in cooperating agency meeting – May 19, 2020.
- EPA provided modeling comments – 6/12/20



# NEPA Process

- EPA Scoping Comments – June 15, 2020
- Draft Supplemental EIS published – Oct 16, 2020
- Public Meeting – Oct./Nov. 2020
- Final SEIS – Mid Dec. 2020
- Record of Decision – January 2021



## Short-Term Actions

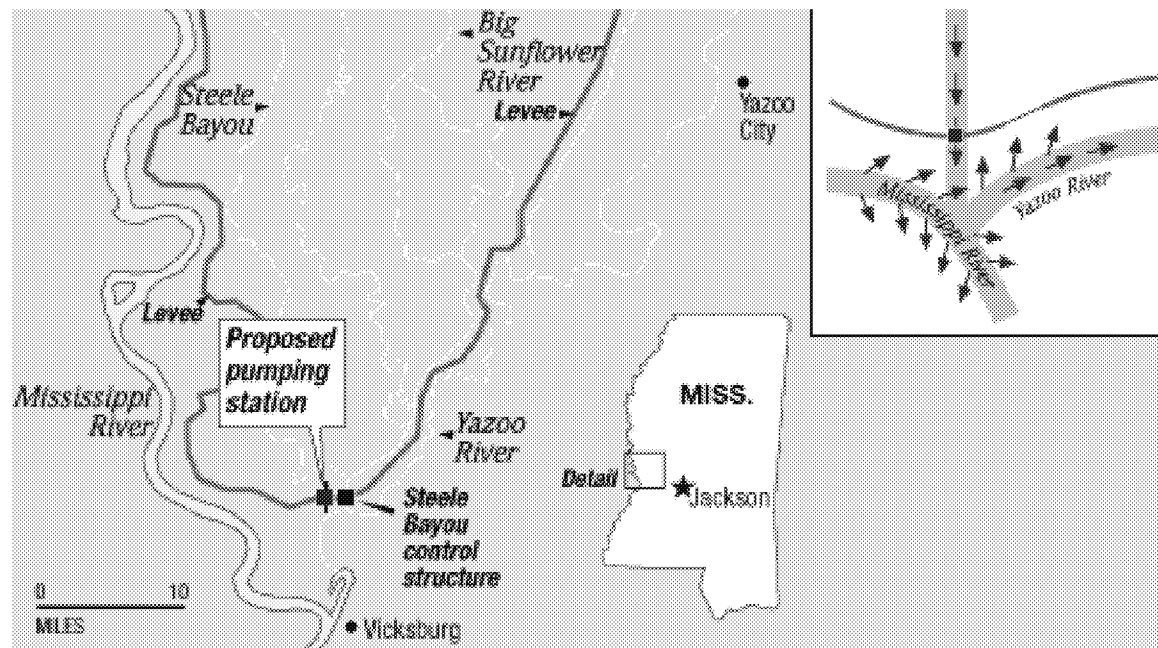
- Review & comment on Draft SEIS – due November 30, 2020
- Participate in public meeting – October/November
- Review & comment on Final SEIS – December/January



# Discussion/Questions









## Appointment

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**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 10/14/2020 4:01:03 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** Yazoo Draft FSEIS Discussion  
**Location:** Teleconference [Ex. 6 Personal Privacy (PP)] Code [Ex. 6 Personal Privacy (PP)]

**Start:** 10/15/2020 8:30:00 PM  
**End:** 10/15/2020 9:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** Bolen, Brittany; Forsgren, Lee; Fotouhi, David; Walker, Mary



## Appointment

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**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 1/23/2020 5:38:29 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Allenbach, Becky [Allenbach.Becky@epa.gov]; Zapata, Cesar [Zapata.cesar@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]  
**CC:** Penman, Crystal [Penman.Crystal@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL [R4-RA-Conf-Rm@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]

**Subject:** General Discussion - Yazoo

**Location:** RA Conference Room/Teleconference - Ex. 6 Personal Privacy (PP) Conference ID Ex. 6 Personal Privacy (PP)

**Start:** 1/27/2020 4:30:00 PM

**End:** 1/27/2020 5:00:00 PM

**Show Time As:** Busy

**Required Attendees:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Fotouhi, David; Blake Ashbee (ashbee.blake@epa.gov); Gettle, Jeaneanne; Palmer, Leif; Allenbach, Becky; Zapata, Cesar; Patrick, Monique; Hicks, Matt; Ghosh, Mita  
**Optional Attendees:** Penman, Crystal; Nalven, Heidi; Wehling, Carrie; Steven Neugeboren; McGill, Thomas; R4-RA-Conf-Rm/Sam-Nunn-Federal-Building-ATL; Goodin, John; Hough, Palmer; Brian Frazer; Kaiser, Russell



## Appointment

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**From:** Forsgren, Lee [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A055D7329D5B470FBAA9920CE1B68A7D-FORSGREN, D]  
**Sent:** 1/22/2020 1:10:09 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Walker, Mary [walker.mary@epa.gov]

**Subject:** Yazoo update

**Location:** Conference line Ex. 6 Personal Privacy (PP) ID# Ex. 8 Personal Privacy (PP)

**Start:** 1/22/2020 4:00:00 PM

**End:** 1/22/2020 4:30:00 PM

**Show Time As:** Busy

**Required Attendees:** David Fotouhi; Walker, Mary



## Appointment

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**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 1/13/2020 5:56:19 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; rich.feibelman@usace.army.mil  
**CC:** Jenkins, Brandi [Jenkins.Brandi@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Zapata, Cesar [Zapata.cesar@Epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Ainslie, William [Ainslie.William@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Jones, Aaryn [Jones.Aaryn@epa.gov]  
**Subject:** (Call-in added) General Discussion with MVD US Army Corps of Engineers  
**Attachments:** MVD EPA Meeting 15 Jan 2020 v1.pdf; Yazoo\_Backwater\_Project\_Features\_01142020.pdf  
**Location:** 61 Forsyth Street SW Atlanta, GA  
  
**Start:** 1/15/2020 6:30:00 PM  
**End:** 1/15/2020 7:30:00 PM  
**Show Time As:** Busy

**Required Attendees:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Blake Ashbee (ashbee.blake@epa.gov); Kaiser, Russell; Gettle, Jeaneanne; rich.feibelman@usace.army.mil  
**Optional Attendees:** Jenkins, Brandi; Frazer, Brian; Goodin, John; Caesar Zapata (Zapata.cesar@Epa.gov); Hough, Palmer; Nalven, Heidi; Calli, Rosemary; McGill, Thomas; Ainslie, William; Penman, Crystal; Jones, Aaryn

-----Original Appointment-----

**From:** R4RA Calendar <R4RA\_Calendar@epa.gov>  
**Sent:** Friday, December 27, 2019 11:12 AM  
**To:** R4RA Calendar; Forsgren, Lee; Walker, Mary; Ashbee, Blake; Kaiser, Russell; Gettle, Jeaneanne; rich.feibelman@usace.army.mil  
**Cc:** Jenkins, Brandi; Frazer, Brian; Goodin, John; Zapata, Cesar; Hough, Palmer; Nalven, Heidi; Calli, Rosemary; McGill, Thomas; Ainslie, William; Penman, Crystal  
**Subject:** (Call-in added) General Discussion with MVD US Army Corps of Engineers  
**When:** Wednesday, January 15, 2020 1:30 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 61 Forsyth Street SW Atlanta, GA

Call-in: Ex. 6 Personal Privacy (PP) Conference ID: Ex. 6 Personal Privacy (PP)

The Sam Nunn Atlanta Federal Center (SNAFC) is located at **61 Forsyth St., SW Atlanta, GA 30303**. The easiest route from the airport is the MARTA train system just follow the signs. Take MARTA to the Five Points Train Station, exit at the Alabama/Forsyth St. side of the station the SNAFC is located directly across from the Five Points MARTA Station (behind the McDonald's). Uber is also a choice; should you choose to drive there are several public parking lots located near the building, with prices ranging from about \$10-\$20.

**Security Procedures:** The SNAFC is a full security building a government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared through security and arrive for the meeting on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. After you have signed in and received a visitor badge please proceed to the 9<sup>th</sup> floor (2<sup>ND</sup> bank of elevators to the right of the security desk) and check in with the EPA receptionist. Please ask them to call x28357 to be escorted to



the RA Office. If you have any additional questions or concerns, please feel free to contact me at 404-562-8357. Thank you

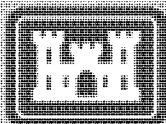


# YAZOO BACKWATER AREA NEW PROJECT DISCUSSION EPA / MVD

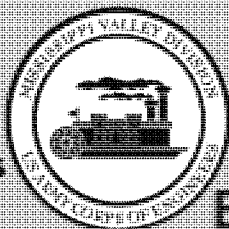
15 JANUARY 2020

MG Mark Toy  
Commander, Mississippi Valley Division

COL Rob Hilliard  
Commander, Vicksburg District



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# Contents of Submission Package

Executive Summary

404b(1) Evaluation

Technical Reports

- Hydrology and Hydraulics
- Engineering and Construction
- Wetlands
- Fisheries
- Water Quality
- Environmental Justice
- Recreation
- Mitigation
- Adaptive Management

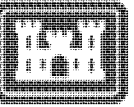


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# YBA New Project Submission Highlights



## 1. New Data since 2009

- Extent of riverine wetlands updated using new LIDAR data – much more accurate
- Ground monitoring wells (67) installed in Delta National Forest, Twin Oaks WLMA, Big Sunflower Basin
- Precipitation (not flooding) maintains 87% of wetlands (published in Wetlands Journal, Dec 2019)
- Bottom line: operation of pumps results in NO loss of wetland acres

## 2. Water Quality

- Addition of 50 well fields at six sites increases water quality (see accompanying map)
- Wells provide aquatic habitat ENHANCEMENT for up to 650 miles of stream during low flow
- Pumps could actually INCREASE dissolved oxygen in water column
- Negligible downstream impacts on both elevation and nutrient load

## 3. Pump and Location

- 14,000 CFS; pump on elevation at 87 feet NGVD
- New location at Deer Creek; more accessible to alternative power sources (see accompanying map)
- Up to 0.2 feet of improvement based on 2019 flood model (two-peaks)

## 4. Adaptive Management Plan

- Increase environmental flows (hydraulic circulation, minimize rapid dewatering)
- Decrease frequency and/or magnitude of low dissolved oxygen conditions
- Improve sediment transport and bedform conditions



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# Yazoo Backwater Project Features



## Legend

★ Existing Control Structures

✕ Original Pump Location

Steele Bayou Site

✕ Alternative Pump Location

Deer Creek Site

▬ Possible Well Field Locations

Levee

Diversion Canal



## Appointment

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**From:** R4RA Calendar [R4RA\_Calendar@epa.gov]  
**Sent:** 8/3/2020 2:54:19 PM  
**To:** R4RA Calendar [R4RA\_Calendar@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**CC:** Johnson, Belinda [Johnson.Belinda@epa.gov]

**Subject:** Yazoo Discussion

**Location:** Teleconference Ex. 6 Personal Privacy (PP) Code: Ex. 6 Personal Privacy (PP)

**Start:** 8/3/2020 5:00:00 PM  
**End:** 8/3/2020 5:30:00 PM  
**Show Time As:** Busy

**Required Attendees:** Forsgren, Lee; Walker, Mary; Fotouhi, David  
**Optional Attendees:** Johnson, Belinda